

# **EXHIBIT “D”**

**Exhibit to  
Plaintiff's Response to Motion to Strike Supplemental Expert Report  
and to Limit Expert Testimony**

<p style="text-align: center;">Page 1</p> <p>IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION</p> <p>VIRGINIA ELIZONDO, § Plaintiff, § § v. § Civil Action No. § 4:21-CV-01997 § SPRING BRANCH INDEPENDENT § SCHOOL DISTRICT, ET AL., § Defendants. §</p> <p>***** ORAL DEPOSITION OF JOHN R. ALFORD, PH.D. MARCH 24, 2022 *****</p> <p>ORAL DEPOSITION OF JOHN R. ALFORD, PH.D., produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 24th day of March, 2022, from 10:27 a.m. to 2:16 p.m., before John G. Rochelle, CSR in and for the State of Texas, reported by machine shorthand, at the SBISD Athletic Complex, 1050 Dairy Ashford Street, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p>	<p style="text-align: center;">Page 3</p> <table border="0"> <thead> <tr> <th style="width: 80%;">INDEX</th><th style="width: 20%;">PAGE</th></tr> </thead> <tbody> <tr><td>Appearances.....</td><td>2</td></tr> <tr><td>JOHN R. ALFORD, PH.D.</td><td></td></tr> <tr><td>Examination by Mr. Golando.....</td><td>5</td></tr> <tr><td>Signature and Changes.....</td><td>170-171</td></tr> <tr><td>Reporter's Certificate.....</td><td>172</td></tr> <tr><td colspan="2"> EXHIBITS</td></tr> <tr><td>NO. DESCRIPTION</td><td>PAGE</td></tr> <tr><td>Exhibit 1.....</td><td>13</td></tr> <tr><td>    Notice of Oral Deposition for John R. Alford, Ph.D.</td><td></td></tr> <tr><td>Exhibit 2.....</td><td>64</td></tr> <tr><td>    Expert Report of John R. Alford, Ph.D. dated February 21, 2022</td><td></td></tr> <tr><td>Exhibit 3.....</td><td>69</td></tr> <tr><td>    Expert Report of Robert M. Stein, Ph.D. dated January 20, 2022</td><td></td></tr> <tr><td>Exhibit 4.....</td><td>119</td></tr> <tr><td>    Article entitled "Political Attitudes Vary with Detection of Androstenone"</td><td></td></tr> <tr><td>Exhibit 5.....</td><td>88</td></tr> <tr><td>    Article entitled "At-Large Elections and Minority Representation in Local Government"</td><td></td></tr> <tr><td>Exhibit 6.....</td><td>163</td></tr> <tr><td>    Document entitled "Letter of Agreement for Services of Consulting and Testifying Expert"</td><td></td></tr> </tbody> </table>	INDEX	PAGE	Appearances.....	2	JOHN R. ALFORD, PH.D.		Examination by Mr. Golando.....	5	Signature and Changes.....	170-171	Reporter's Certificate.....	172	 EXHIBITS		NO. DESCRIPTION	PAGE	Exhibit 1.....	13	Notice of Oral Deposition for John R. Alford, Ph.D.		Exhibit 2.....	64	Expert Report of John R. Alford, Ph.D. dated February 21, 2022		Exhibit 3.....	69	Expert Report of Robert M. Stein, Ph.D. dated January 20, 2022		Exhibit 4.....	119	Article entitled "Political Attitudes Vary with Detection of Androstenone"		Exhibit 5.....	88	Article entitled "At-Large Elections and Minority Representation in Local Government"		Exhibit 6.....	163	Document entitled "Letter of Agreement for Services of Consulting and Testifying Expert"	
INDEX	PAGE																																								
Appearances.....	2																																								
JOHN R. ALFORD, PH.D.																																									
Examination by Mr. Golando.....	5																																								
Signature and Changes.....	170-171																																								
Reporter's Certificate.....	172																																								
 EXHIBITS																																									
NO. DESCRIPTION	PAGE																																								
Exhibit 1.....	13																																								
Notice of Oral Deposition for John R. Alford, Ph.D.																																									
Exhibit 2.....	64																																								
Expert Report of John R. Alford, Ph.D. dated February 21, 2022																																									
Exhibit 3.....	69																																								
Expert Report of Robert M. Stein, Ph.D. dated January 20, 2022																																									
Exhibit 4.....	119																																								
Article entitled "Political Attitudes Vary with Detection of Androstenone"																																									
Exhibit 5.....	88																																								
Article entitled "At-Large Elections and Minority Representation in Local Government"																																									
Exhibit 6.....	163																																								
Document entitled "Letter of Agreement for Services of Consulting and Testifying Expert"																																									
<p style="text-align: center;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFF: 4 Mr. Barry Abrams Blank Rome LLP 5 717 Texas Avenue, Suite 1400 Houston, Texas 77002 6 Phone: (713) 228-6606 Email: babrams@blankrome.com 7 8 AND 9 Mr. Martin Golando The Law Office of Martin Golando, PLLC 2326 W. Magnolia 10 San Antonio, Texas 78201 Phone: (210) 471-1185 11 Email: martin.golando@gmail.com 12 13 FOR THE DEFENDANTS: 14 Mr. Charles J. Crawford Abernathy, Roeder, Boyd &amp; Hullett, P.C. 15 1700 N. Redbud Boulevard, Suite 300 McKinney, Texas 75069 16 Phone: (214) 544-4000 Email: ccrawford@abernathy-law.com 17 18 ALSO PRESENT: 19 Ms. Audrey Shakra 20 21 22 23 24 25</p>	<p style="text-align: center;">Page 4</p> <p>1 Exhibit 7..... 165 Article entitled "Republican Party of Texas Doubles Down on Local Election" 2 3 4 Exhibit 8..... 166 Article entitled "Do District-Based Elections for School Board Help Minority Candidates Get Elected?" 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>																																								

<p style="text-align: center;">Page 5</p> <p>1           (Exhibit Nos. 1 through 8 premarked.)      2           JOHN R. ALFORD, PH.D.,      3           having been first duly sworn, testified as follows:      4           EXAMINATION      5           BY MR. GOLANDO:      6           <b>Q. Good morning, Dr. Alford.</b>      7           A. Good morning.      8           <b>Q. My name is Martin Golando. We've met before.</b>      9           <b>I represent Virginia Elizondo in this case. And you've</b>      10          <b>read the pleadings, and you've read the expert reports;</b>      11          <b>is that correct?</b>      12          A. That's correct.      13          <b>Q. And you've had your deposition taken -- I don't</b>      14          <b>know -- 140 times, something like that?</b>      15          A. I don't know if it's that many times, but it      16          seems like that many times.      17          <b>Q. So you're well-acquainted with the process. I</b>      18          <b>don't think I've ever deposed you before, but --</b>      19          A. I don't think so.      20          <b>Q. -- I am a little inarticulate. I talk a little</b>      21          <b>mushmouthy. And so if you don't understand what I'm</b>      22          <b>asking you to do, or asking you to say, it's my fault.</b>      23          <b>So just ask me to repeat it, or I'll have him repeat it</b>      24          <b>to you. It's just I want to make sure that we're very</b>      25          <b>clear on the record the questions and answers. Right?</b></p>	<p style="text-align: center;">Page 7</p> <p>1           A. No.      2           <b>Q. Because they had a great drama teacher. I</b>      3          <b>don't know if you knew that or not.</b>      4          A. Oh, yeah. Like world-renowned, really amazing.      5          And a very -- the University of Houston is a place I'm      6          very proud of.      7          <b>Q. I would be, too. So if you watch any of the</b>      8          <b>Lakers series, the guy who's playing Bill Sharman --</b>      9          A. Yeah.      10         <b>Q. -- actually went to the University of Houston</b>      11         <b>at roughly the time you were there.</b>      12         A. Yeah.      13         <b>Q. I didn't know if you --</b>      14         A. Yeah.      15         <b>Q. -- if you knew him or not.</b>      16         A. Yeah. They had a pretty good basketball team      17         back then, too.      18         <b>Q. They did. Is that Calvin Hayes or --</b>      19         A. Yeah. Yeah.      20         <b>Q. Yeah. Fair enough.</b>      21         A. Yeah. When I was in high school was sort of      22         their -- it was their real peak for U of H basketball.      23         I guess I was in middle school when -- I think when      24         they -- when they beat UCLA, which was just spectacular.      25         <b>Q. And it was 1973?</b></p>
<p style="text-align: center;">Page 6</p> <p>1           The second instruction, I think, is the -- I need you to      2           wait till I finish asking the question, and then you can      3           answer. And I will try not to interrupt you. If you      4           would try not to interrupt me, I'd be appreciative. And      5           if you don't understand anything I'm saying or if you      6           don't understand the question, again, just let me know,      7           and we'll try to work it through. I promise.      8           So would you mind telling me what is your      9           full name for the record, please?      10          A. It's John Richard Alford.      11          <b>Q. And where do you live, sir?</b>      12          A. I live in Houston, Texas.      13          <b>Q. Okay. And did you go to high school here? I</b>      14          <b>think you did. Right?</b>      15          A. I went to -- it's a good, good question. I      16          went to -- I went to Clear Creek High School, which is      17          of course in Galveston County. And we lived on the --      18          what would not be in Houston, but at the time had not      19          yet been annexed so --      20          <b>Q. Interesting. Fair enough. And so where did</b>      21          <b>you go to school first for college?</b>      22          A. University of Houston.      23          <b>Q. And when were you there roughly?</b>      24          A. Late '70s.      25          <b>Q. Okay. Did you ever do any drama there?</b></p>	<p style="text-align: center;">Page 8</p> <p>1           A. Yeah. Yeah. So it would have been -- no.      2           Yeah, I guess I would have been there. Pretty -- you      3           know, I spent a lot of time talking to people from      4           the -- sort of that era and the era just before I was      5           there. It was just a really interesting time. And Gene      6           Locke has some fascinating stories about his time at U      7           of H. It was just a -- you know, it was a very short      8           time before I was there, but a different world than it      9           was by the time -- by the '70s. The '60s at U of H was      10          quite different. So it's interesting.      11          <b>Q. That's interesting. And after that you went</b>      12          <b>and got an MPA; is that correct?</b>      13          A. I got a -- yes. I got a bachelor's and a      14          master's of public administration.      15          <b>Q. And then you went to Iowa, correct?</b>      16          A. Iowa. Correct.      17          <b>Q. And when were you in Iowa?</b>      18          A. So Iowa would have been from, say, '79 to '84.      19          Something like that.      20          <b>Q. And what did you study at Iowa? What was your</b>      21          <b>major course of study?</b>      22          A. So American politics, methodology, and public      23          policy.      24          <b>Q. And did you study Bernie Grofman then and his</b>      25          <b>ecological regression at the time, or what did you --</b></p>

<p style="text-align: center;">Page 9</p> <p>1     <b>what was your first introduction to regression?</b></p> <p>2       A. That probably would have been the first time I 3       was familiar with that. And then when I -- I continued 4       to work with some people at U of H, and so I -- and 5       Bernie back and forth for a time period because mother 6       lived in Houston for a while. So I met him. And we 7       didn't ever actually work on any research projects 8       together; but, you know, he's a -- he's an amazing 9       fella.</p> <p>10      <b>Q. He is. He's extraordinarily impressive. So</b> 11      <b>you were at Iowa, got your Ph.D., and you came back to</b> 12      <b>Houston? Or what was your first job out of Iowa?</b></p> <p>13       A. No. I got a job at Oakland University.</p> <p>14      <b>Q. In Michigan?</b></p> <p>15       A. Yes.</p> <p>16      <b>Q. Okay.</b></p> <p>17       A. I wasn't aware of the fact it was in Michigan. 18       When I accepted the interview I thought it was in 19       Oakland. Foolish me. You know, pretty much -- I was 20       born in Japan, but I pretty much grew up in Houston. 21       And so Iowa was a very cold experience for me.</p> <p>22      <b>Q. I bet.</b></p> <p>23       A. I was excited about getting somewhere else, and 24       I wasn't really thinking about going kind of further 25       north. And so I went to -- I went to Oakland. I was</p>	<p style="text-align: center;">Page 11</p> <p>1       construction company in Iran. Then we spent a year in 2       Vienna, then a couple years in Washington, D.C., where 3       he was doing consulting, and then Corpus Christi and 4       some other places before he -- he finally settled down, 5       went to work for NASA when they were just building 6       the -- building that up. And that's where -- so that's 7       where I settled in and went to middle school and high 8       school. But a lot of moving around before that.</p> <p>9      <b>Q. Me too. Not quite to Iran, but -- I'm going to</b> 10     <b>hand you the --</b></p> <p>11       A. Yeah. You pretty much trump anybody with Iran 12       because nobody lived there.</p> <p>13      <b>Q. So you were in Iran during -- when there was a</b> 14      <b>shah, right?</b></p> <p>15       A. We actually met the shah.</p> <p>16      <b>Q. What was that like?</b></p> <p>17       A. Unimaginably weird, like -- like waking up in 18       some kind of a weird '50s Disney movie or something 19       because they -- this was to celebrate the opening of -- 20       the completion of this dam project, and they completely 21       remade the town. I mean, they just -- like they changed 22       the -- you know, artificially sort of with paper and 23       stuff changed the outside of the building. So they had 24       all these gold banners everywhere. Everybody put on 25       these fancy clothes. And just like a weird retinue of</p>
<p style="text-align: center;">Page 10</p> <p>1       there for a year. And then I got recruited by 2       University of Georgia. So I was at University of 3       Georgia for a couple of years. And then the professor 4       who had been my mentor at U of H in the meantime had 5       jumped to Rice, and he recruited me to come back to 6       Houston.</p> <p>7      <b>Q. Must have been nice to come home, I guess?</b></p> <p>8       A. Yeah.</p> <p>9      <b>Q. So you said you were born in Japan? Is that</b> 10     <b>correct?</b></p> <p>11       A. Yes.</p> <p>12      <b>Q. Was your dad in the military, mom in the</b> 13     <b>military?</b></p> <p>14       A. My dad is a -- yeah, an Army officer, and 15       so we -- it was during the Korean war. He was stationed 16       in -- he had been in the Pacific in World War II but 17       then came back in the Korean war and was in a -- running 18       a supply area in southern Japan. That's where I was 19       born.</p> <p>20      <b>Q. I didn't know that. I guess you bounced around</b> 21     <b>a bit, huh, after that or --</b></p> <p>22       A. Iran, Vienna, lots of different places in the 23       United States. When he retired from the military out 24       of -- we came back to Fort Bliss. He retired out of 25       Fort Bliss and then immediately took a job with a</p>	<p style="text-align: center;">Page 12</p> <p>1       people coming through. And, you know, it was just -- it 2       was very, very strange.</p> <p>3      <b>Q. How old were you?</b></p> <p>4       A. It was -- let's see. Six.</p> <p>5      <b>Q. Wow.</b></p> <p>6       A. So it was -- at the time it just seemed -- I 7       mean, everything about Iran seemed fanciful. Most 8       things about Vienna seemed fanciful, too, but -- but I 9       actually haven't been back to Iran, but I've been back 10      to where we lived in Vienna. It's one of those things 11      where you -- when you're a kid you think, you know, 12      everything is weird and strange and big. And I remember 13      talking to my brother, and I said, "You know, do you 14      remember like when we lived in Vienna? I remember we 15      were living in this really huge, almost like a castle on 16      a hill, and it had a turret, and there were like" -- 17      "the people lived in the turret, and we weren't allowed 18      to go in there." And my brother said -- he was younger. 19      My brother was a couple of years younger than me. He 20      said, "You know, I've heard like our sister talking 21      about that," but he said, "I'm not sure that is true." 22      So I went back to Vienna, and it turned out it all was 23      true.</p> <p>24      <b>Q. That's wild.</b></p> <p>25       A. Yeah.</p>

<p style="text-align: center;">Page 13</p> <p>1       <b>Q. So you're here pursuant to a notice of</b>      2       <b>deposition, correct?</b></p> <p>3       A. Correct.</p> <p>4       <b>Q. Have you seen the notice, sir?</b></p> <p>5       A. I have.</p> <p>6       <b>Q. I'm going to hand it to you. It's been</b>      7       <b>previously marked as Exhibit No. 1. Could you review it</b>      8       <b>for me and make sure it's authentic?</b></p> <p>9       A. Yeah, that's what I remember seeing.</p> <p>10      <b>Q. So did you see the subpoena in the back for the</b>      11      <b>documents?</b></p> <p>12      A. Yes.</p> <p>13      <b>Q. Okay. Did you have any documents for me?</b></p> <p>14      A. I have -- I consulted with Mr. Crawford, and I      15      have documents that are related to my report.</p> <p>16      <b>Q. Okay.</b></p> <p>17      A. And to my contract with the attorneys.</p> <p>18      <b>Q. Did you bring them with you today? Because I</b>      19      <b>have not seen them.</b></p> <p>20      A. Oh. Sorry.</p> <p>21      MR. CRAWFORD: John, are these your      22      originals?</p> <p>23      THE WITNESS: They're --</p> <p>24      MR. CRAWFORD: We can get copies made for      25      you.</p>	<p style="text-align: center;">Page 15</p> <p>1       <b>past?</b></p> <p>2       A. Yes.</p> <p>3       <b>Q. What was the nature of that engagement?</b></p> <p>4       A. So I'm -- I'm not entirely sure about the      5       specific years, but sort of the timeline, my      6       recollection is that there was a lawsuit filed against      7       the district previously. And it could have been in      8       the -- perhaps in the '90s, maybe in the early 2000s,      9       but some -- some time ago. And I was hired by Robert      10      Heath, who was the attorney that was hired to defend the      11      school district. And I worked with him on that. And I      12      don't know if the -- I can't remember what the      13      resolution of that was. It didn't go to trial. I think      14      it was either dismissed or nonsuited. I'm not really      15      sure.</p> <p>16      <b>Q. Do you remember the nature of it? Was it a</b>      17      <b>voting rights lawsuit?</b></p> <p>18      A. It was a -- it was a Section 2 voting rights      19      lawsuit, and the -- it turned out that it wasn't      20      possible to -- the only part that I had in it, my      21      recollection is, that it started with some -- a lot of      22      debate about whether Gingles 1 could be met, and that      23      ended up being what the suit was either dismissed or      24      nonsuited over, was the inability to actually draw a      25      majority-minority district.</p>
<p style="text-align: center;">Page 14</p> <p>1       MR. GOLANDO: Please. That would be great.</p> <p>2       A. So this is a -- this is just the email exchange      3       that was related to the contract. This is the contract.      4       And this is -- in the report I referenced a web page      5       related to single-member versus at-large. And then I      6       referenced a press release from the Republican Party.      7       So those are the -- other than the documents that I      8       consulted that were either Dr. Stein's report or his own      9       articles he cited, that sort of thing, these are the      10      things that both related to the contract and to      11      materials I relied on or referenced in the report.</p> <p>12      <b>Q. (BY MR. GOLANDO) This is the entirety of the</b>      13      <b>documents --</b></p> <p>14      A. Yes.</p> <p>15      <b>Q. -- that you believe are responsive to the</b>      16      <b>subpoena, correct?</b></p> <p>17      A. Yes.</p> <p>18      <b>Q. I'm going to give these to your counsel so he</b>      19      <b>can review them and then give me what he thinks is</b>      20      <b>responsive. And I'm going to have Barry review it</b>      21      <b>during the deposition. And I don't think we'll have any</b>      22      <b>questions about it, but if we do I want to make sure we</b>      23      <b>get it tacked on at the end, if you don't mind.</b></p> <p>24      A. Yes.</p> <p>25      <b>Q. Have you worked for Spring Branch ISD in the</b></p>	<p style="text-align: center;">Page 16</p> <p>1       <b>Q. Did you review Gingles 2 or 3 testimony?</b></p> <p>2       A. I -- I just don't -- I don't remember whether      3       that -- whether we had started that or hadn't, but I --      4       I certainly didn't do anything in the sense of a report      5       on it or anything. I don't -- you know, Bob Heath may      6       still have that information. I don't even have the      7       records from that era anymore. But I don't -- I don't      8       recall doing -- again, I may have or may not. I know it      9       wasn't -- -- it never got to that stage in terms of --      10      either of my doing a formal report or a deposition.</p> <p>11      <b>Q. Do you recall coming to an opinion about</b>      12      <b>racially polarized voting in any sense in SBISD at that</b>      13      <b>time period?</b></p> <p>14      A. No, I don't think -- I don't recall anything at      15      that time period, no.</p> <p>16      <b>Q. Is that the extent of your previous engagement</b>      17      <b>with SBISD? Did you do anything else for them in the</b>      18      <b>intervening years?</b></p> <p>19      A. So in the intervening years when -- I'm not      20      sure exactly about the dates on this, but sometime more      21      recently I was retained to work with counsel for the      22      district on issues related to the districting scheme.      23      So they -- the district was considering alternatives to      24      the current at-large system, including single-member or      25      mixed plans. There was -- I think most of my discussion</p>

<p style="text-align: right;">Page 17</p> <p>1 with them had to do with alternative elections,      2 particularly moving to something like cumulative      3 elections. So I've been involved in the shift in      4 Amarillo to cumulative elections. And so I think most      5 of what I provided to the attorneys was information      6 about kind of the nature of -- I think they had      7 demographers that were working. I wasn't doing -- so I      8 do both, you know, sort of redistricting lawsuits, and I      9 also do redistricting, so I do district drawing. I      10 didn't -- I wasn't involved in drawing districts for      11 them. They had some demographer doing that. I was      12 mainly involved in sort of providing information about      13 how cumulative elections would work and sort of what      14 were the -- what were kind of the critical break points.</p> <p>15 One of the issues in cumulative elections      16 are -- it's these thresholds of exclusion. And they      17 vary depending on how many people are up. And so that      18 was one of the questions. It's -- you know, it's really      19 easy to meet the threshold of exclusion if you put all      20 seven board members up in the same election, but -- but,      21 you know, there are reasons why districts typically      22 don't put all their board members up at the same time.      23 So that was I think the main question that I was      24 addressing for them, was, you know, what -- what -- what      25 set of staggered terms involving how many members would</p>	<p style="text-align: right;">Page 19</p> <p>1 indicated at the time was that while they couldn't draw      2 a Gingles 1 district at that point, which I think may      3 have been around 2000, that it was clear that the      4 population trends, given the direction of population      5 trends, the day was going to come when they could      6 draw -- when they could draw a single -- when you could      7 draw a Gingles 1 district, and that in my experience any      8 district that could draw a Gingles 1 district should be      9 thinking seriously about what they intended to do about      10 it because it's -- it's not that hard to get -- it's not      11 that hard to win a Voting Rights Act Section 2 case if      12 you can't draw a single-member district. There's really      13 only one thing where you're not at the mercy of sort of      14 interpretation or the court's feelings, or whatever, and      15 that is the bright line, like -- I mean, even if they      16 just go under it by, you know, a tenth of a percentage      17 point, apparently like the one person, one vote standard      18 for congressional districts, that -- apparently the      19 court means, literally means one person, one vote.</p> <p>20 <b>Q. Yeah.</b></p> <p>21 A. The bright-line test literally means the      22 bright-line test. And nothing after that, as I always      23 tell districts when I talk to them, nothing after that      24 is a bright line, nothing after that you can be assured,      25 you can say "okay, given this set of facts we're</p>
<p style="text-align: right;">Page 18</p> <p>1 meet the threshold of exclusion.</p> <p>2 <b>Q. Was that in 2020, or was that in 2019?</b></p> <p>3 A. I think -- I could be wrong about this, but I      4 think there -- that this may have come up sort of in      5 that time frame, and then come up again more recently,      6 maybe -- coming up again maybe in 2017, 2018, somewhere      7 in that time frame.</p> <p>8 <b>Q. But in the last four years roughly?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Do you recall why they wanted to investigate an</b>  <b>11 alternative election system? By "they" I mean SBISD.</b></p> <p>12 A. I don't -- I don't think I was given a lot of      13 direct information about sort of what the thinking was,      14 but my impression was -- or at least I approached it as      15 probably a combination of motivations maybe, different      16 motivations possibly by different -- either by different      17 board members or different people involved. But -- so      18 my sense is they were -- that they were both looking at      19 that as something the district might just want to do,      20 and also looking at it as something the district might      21 do in a -- in a sort of a prophylactic way; that is, to      22 avoid being -- to avoid being sued.</p> <p>23 So at the -- in the very earliest instance      24 where it was clear that you couldn't draw a Gingles 1      25 district, I mean, one of the things that -- that I</p>	<p style="text-align: right;">Page 20</p> <p>1 definitely going to win this case or we're going to" --      2 "you know, we could get this" -- "we could get the      3 summary judgment or something." Once you get into not      4 only the other thresholds but the totality of the      5 circumstance then you -- it's not only does that mean      6 that you're actually going to probably end up in a full      7 trial as opposed to getting summary judgment on Gingles      8 1. That's going to be expensive and it's -- and it's      9 going to be uncertain and it involves a lot of political      10 considerations that I think are important for a board to      11 be -- to be thinking about in advance.</p> <p>12 It's not something you want to take      13 lightly. So that was sort of where things were left, or      14 initially was that this was -- that that point was going      15 to come, and when that point -- when they reached the      16 point where they were no longer sort of protected by the      17 fact that a district couldn't be drawn that they were --      18 they needed to be thinking about what they wanted to do      19 at that point so --</p> <p>20 <b>Q. Do you remember the names of the demographers</b>  <b>21 involved?</b></p> <p>22 A. I do not.</p> <p>23 <b>Q. Do you recall if they did a racially polarized</b>  <b>24 voting analysis, if anybody did?</b></p> <p>25 A. I -- I'm -- I wasn't sort of privy to all of</p>

<p style="text-align: right;">Page 21</p> <p>1 whatever their discussions were. I'm not sure I was      2 ever in -- either in direct contact with any of the      3 demographers or present when they were discussing things      4 with the lawyers, so I -- if they did, I wasn't aware of      5 it, but I don't know whether they did or not.</p> <p><b>Q. Did you do a racially polarized voting analysis?</b></p> <p>6 A. At that point there was a -- I did just a very      7 preliminary, not -- sort of -- maybe not an actual      8 racially polarized voting analysis, but a quick look      9 at -- just looking at sort of where -- where candidate      10 votes were centered across the rough -- you can only do      11 it across the rough geography because there's so few      12 polling places. But just looking at where vote totals      13 were centered and how they varied across the geography,      14 but not a formal -- not like a EI formal analysis. At      15 that point it was just to look at the -- at sort of what      16 the election results looked like across the rough      17 geography.</p> <p><b>Q. What was your informal conclusion? Do you recall?</b></p> <p>18 A. My informal conclusion was that that rough look      19 was certainly consistent with the possibility that --      20 both that Hispanic voters were voting at above 50      21 percent for preferred candidates, including Hispanic</p>	<p style="text-align: right;">Page 23</p> <p>1 complete analysis of the sort that you typically will      2 see in a case like this.</p> <p><b>Q. Did you do ecological inference?</b></p> <p>3 A. Yes.</p> <p><b>Q. Gary King's?</b></p> <p>4 A. Well -- oh, God. It's -- it is essentially      5 Gary King's, but not Gary King's original, and      6 particularly not his iterative, which I for some reason      7 find myself fighting about all over the country. People      8 still insist on using King's iterative, which King only      9 just mentioned in passing, and then immediately, you      10 know, replaced with a -- so, yes, the -- what I      11 typically use is the variant of King's EI that's      12 sometimes called the Bayesian or I -- I think it more      13 appropriately is R x C approach. But it's essentially      14 King's EI.</p> <p><b>Q. I understand. And did you do the numbers yourself?</b></p> <p>15 A. I think -- so there were two -- two pieces to      16 that. There was a standard, just an OLS, which I often      17 do just as a first estimate. It's not as -- it doesn't      18 do as good a job. It doesn't give you statistical      19 significance, but it usually gives you a pretty good      20 quick picture, which I did. And then the actual EI      21 would have been run by Randy Stevenson, who's a</p>
<p style="text-align: right;">Page 22</p> <p>1 candidates, and that Anglo voters are voting below 50      2 percent for those candidates, and those candidates      3 weren't being elected to the board.</p> <p><b>Q. Fair enough. And I think I -- in your answer I heard you say you had not done one yet. Have you done a racially polarized voting analysis?</b></p> <p>4 A. Since?</p> <p><b>Q. Since.</b></p> <p>5 A. Yes.</p> <p><b>Q. And not for this case, but for --</b></p> <p>6 A. Right. Not for this case, but -- but more      7 recently than the -- so there -- there are sort of three      8 distinct eras here, the old --</p> <p><b>Q. Sure.</b></p> <p>9 A. -- the dinosaur era, which was about meeting      10 Gingles 1 with Bob Heath, the more recent stuff three,      11 four years ago looking at -- particularly focusing on      12 potential things the district might want to think about.      13 That was, again, this rough kind of look. And in      14 addition a more direct focus on cumulative voting on      15 systems with some at-large, you know, some      16 single-member. And then more recently I was asked by --      17 we're now at the -- at the second set of attorneys      18 rather than the third -- at the second set of attorneys      19 asked to provide the attorneys with, you know, a more</p>	<p style="text-align: right;">Page 24</p> <p>1 professor at Rice, who does a lot of programming and      2 statistical work with me.</p> <p><b>Q. And this was before the filing of this suit, correct?</b></p> <p>3 A. I believe so, although I'm not -- I'm not      4 exactly certain when the suit was filed or exactly      5 when --</p> <p><b>Q. Yes, sir.</b></p> <p>6 A. -- when the work was done. But I -- yeah, I      7 would say -- I think it was before the suit was filed,      8 but it could have been -- no, no, no, because there was      9 discussion -- I think the district was aware that they      10 could be sued so -- what I'm not sure about is the -- I      11 had been asked to sort of take a look, so I had done      12 that very informal look. And I had been asked by the      13 lawyers to take a look at that, and at that stage I      14 think probably was when I ran the sort of regression      15 analysis. Whether that -- whether the actual EI      16 analysis was done before or shortly after the lawsuit      17 was filed I don't -- I don't know.</p> <p><b>Q. Do you recall the conclusions of that report?</b></p> <p>18 A. I did not provide a report.</p> <p><b>Q. Did you recall -- do you recall the findings from your analysis?</b></p> <p>19 A. So the findings I shared with the attorneys</p>

<p style="text-align: center;">Page 25</p> <p>1 from that analysis.</p> <p>2 MR. CRAWFORD: And so based on that answer</p> <p>3 I'll ask you not to disclose what you told the attorneys</p> <p>4 based on the attorney-client privilege.</p> <p>5 <b>Q. (BY MR. GOLANDO) Is Lisa Turner your attorney,</b></p> <p>6 <b>sir?</b></p> <p>7 A. Lisa --</p> <p>8 <b>Q. I'm sorry. What was the previous attorney's</b></p> <p>9 <b>name?</b></p> <p>10 MR. CRAWFORD: Lisa McBride.</p> <p>11 MR. GOLANDO: I'm sorry. I apologize.</p> <p>12 MR. CRAWFORD: No problem.</p> <p>13 <b>Q. (BY MR. GOLANDO) Is Lisa McBride your</b></p> <p>14 <b>attorney?</b></p> <p>15 A. My attorney? No, she doesn't represent me.</p> <p>16 <b>Q. All right.</b></p> <p>17 A. But that's who I was working for when she</p> <p>18 represented the school board.</p> <p>19 <b>Q. Yeah, I understand. And when she contacted you</b></p> <p>20 <b>to do the EI analysis I heard you to say that it's</b></p> <p>21 <b>possible it happened before the institute of this</b></p> <p>22 <b>lawsuit. Correct?</b></p> <p>23 A. That's possible, yes.</p> <p>24 <b>Q. Okay.</b></p> <p>25 MR. GOLANDO: I think we need to -- I need</p>	<p style="text-align: center;">Page 27</p> <p>1 court. And if we need to re-present Dr. Alford we will,</p> <p>2 but I'm not comfortable even under seal waiving the --</p> <p>3 waiving the objection.</p> <p>4 MR. GOLANDO: I understand. I think that's</p> <p>5 reasonable. Fair enough. So let's just move on.</p> <p>6 <b>Q. (BY MR. GOLANDO) So the OLS that you did was</b></p> <p>7 <b>definitely before the lawsuit, correct, the ordinary</b></p> <p>8 <b>least squares?</b></p> <p>9 A. Could you remind me when the lawsuit was filed?</p> <p>10 That might be --</p> <p>11 MS. SHAKRA: June -- June --</p> <p>12 MR. GOLANDO: June of last year.</p> <p>13 MS. SHAKRA: 2021. Probably like June --</p> <p>14 MR. GOLANDO: The 30th?</p> <p>15 MS. SHAKRA: No. It was before the 26th.</p> <p>16 I want to say it was maybe like the 12th.</p> <p>17 MR. ABRAMS: I'll be able to tell you in a</p> <p>18 minute. Just give me a second.</p> <p>19 THE WITNESS: I feel better for not</p> <p>20 knowing. I felt kind of stupid, like I didn't know when</p> <p>21 the lawsuit was filed. So this is nice. I feel better.</p> <p>22 MS. SHAKRA: Okay. Let's see.</p> <p>23 MR. ABRAMS: The amended complaint was</p> <p>24 filed on June 22nd, so the original complaint would have</p> <p>25 been filed several days before.</p>
<p style="text-align: center;">Page 26</p> <p>1 to talk to Barry real quick, if you don't mind.</p> <p>2 MR. CRAWFORD: Okay.</p> <p>3 MR. GOLANDO: We're going to take a -- just</p> <p>4 a two-minute break.</p> <p>5 MR. CRAWFORD: Sure.</p> <p>6 MR. GOLANDO: Two or three-minute break.</p> <p>7 (Off the record from 10:54 a.m.</p> <p>8 to 10:55 a.m.)</p> <p>9 <b>Q. (BY MR. GOLANDO) As I understand it, I asked</b></p> <p>10 <b>you what the contents of that previous analysis was, and</b></p> <p>11 <b>you -- Mr. Crawford objected on the basis of</b></p> <p>12 <b>attorney-client privilege, is that correct, and you're</b></p> <p>13 <b>currently refusing to answer that question? Correct?</b></p> <p>14 A. I'm deferring to whatever -- whatever Charles</p> <p>15 tells me to do that's what I'll do.</p> <p>16 <b>Q. I don't think there's a basis to object to that</b></p> <p>17 <b>because I need to know your previous analyses for</b></p> <p>18 <b>credibility and weight. You've been hired on this</b></p> <p>19 <b>position and --</b></p> <p>20 MR. GOLANDO: What I'd like to do instead</p> <p>21 is to see if we can put this answer under seal, and we</p> <p>22 can go fight about it with the --</p> <p>23 MR. CRAWFORD: No, I'm not willing to waive</p> <p>24 it. So what we can do is we can note it in the record,</p> <p>25 and then after the deposition we can take it up with the</p>	<p style="text-align: center;">Page 28</p> <p>1 <b>Q. (BY MR. GOLANDO) So mid June.</b></p> <p>2 A. I was -- I thought it was in the fall, so</p> <p>3 that's earlier. So I don't -- I don't know. I mean, I</p> <p>4 could -- I could figure that out, but I just don't --</p> <p>5 that's -- I didn't realize the lawsuit was filed quite</p> <p>6 that early, so I don't -- I may have done that -- I</p> <p>7 think I probably did it sometime in the summer, but I</p> <p>8 think it might have been more like August rather than --</p> <p>9 than in -- sort of in the -- in May. I'm just not sure.</p> <p>10 <b>Q. I understand.</b></p> <p>11 A. But I can find out.</p> <p>12 <b>Q. If it was in May, then do you recall the</b></p> <p>13 <b>outcome or what the ordinary least squares regression</b></p> <p>14 <b>showed?</b></p> <p>15 MR. CRAWFORD: Again, I'm going to object</p> <p>16 to that based on the attorney-client and work product</p> <p>17 privileges and doctrine. And, Martin, just to your</p> <p>18 point, I believe that even if the lawsuit had not been</p> <p>19 filed at that time it was in -- at least in anticipation</p> <p>20 of litigation, and the privilege would also apply.</p> <p>21 MR. GOLANDO: Okay.</p> <p>22 MR. CRAWFORD: And the doctrine.</p> <p>23 MR. GOLANDO: We'll see about that.</p> <p>24 MR. CRAWFORD: Sure.</p> <p>25 <b>Q. (BY MR. GOLANDO) I'm going to hand you Exhibit</b></p>

<p style="text-align: right;">Page 29</p> <p>1     <b>1 again, please. I want you to look at the last number</b>      2     <b>three of the subpoena. Do you see that, sir?</b></p> <p>3       A. Yes.</p> <p>4       <b>Q. Okay. What does that say? Could you repeat it</b>      5     <b>for the court?</b></p> <p>6       A. It says "All reports that the witness has      7     prepared for the Spring Branch Independent School      8     District or its counsel, on any subject for which he      9     has been compensated."</p> <p>10      <b>Q. Would you agree with me that those analyses</b>      11     <b>that you provided Ms. McBride would have been captured</b>      12     <b>by that -- that request?</b></p> <p>13       A. I guess I didn't -- so two issues for me. One      14     is I wasn't certain about what of that would be -- sort      15     of normally would be disclosable or not, so I -- you      16     know, I checked with Charles. And, also, I never      17     provided a report to the district or the counsel. I      18     provided, you know, information and some tables, but      19     I -- I didn't -- it never reached the point of my      20     actually providing an expert report. So I guess I      21     wasn't -- I wasn't sure about exactly whether this      22     entailed sort of everything I ever told the lawyers.      23     And then I also wasn't sure about what of that was --      24     what was protected and not, so I'm relying on the      25     attorneys --</p>	<p style="text-align: right;">Page 31</p> <p>1       A. Not inconsistent. I guess -- so, I mean, I --      2     you know, I think -- my recollection is that I wasn't      3     satisfied that I sort of understood fully what was going      4     on on the basis of that analysis. So one of the things      5     that can be problematic with -- well, in lots of things      6     that can be problematic with OLS -- but it just was      7     not -- it -- it had, you know, sort of large confidence      8     intervals, and my recollection is there were some things      9     internally that didn't look like they -- they were      10     consistent across some of the elections, whatever,      11     that -- that led me to think that -- I mean, one of the      12     things that obviously is important here, as true with      13     any case where you're dealing with Hispanic voters, is      14     turnout is really critical to understanding what you're      15     actually seeing. And turnout doesn't get captured in      16     the OLS, and so it's -- well, normally -- when I say      17     "normally," so in a case where you have either the      18     surnames of the voters, or a case involving black voters      19     where black VAP is solid as a rock, it really doesn't      20     make -- you can do the analysis either way. It's going      21     to be about the same.</p> <p>22       The advantage for -- for using -- in my      23     view for using R x C EI with -- if the case is a      24     Hispanic case and if you're relying on something other      25     than the vote codes -- so a lot of time you're relying</p>
<p style="text-align: right;">Page 30</p> <p>1       <b>Q. I understand.</b>      2       A. -- on that.</p> <p>3       <b>Q. Did you provide Mr. Crawford or anybody else at</b>      4     <b>that firm the documents we've just been talking about,</b>      5     <b>the OLS, or the EI that you did, and it sounds like in</b>      6     <b>the summer of 2021?</b></p> <p>7       A. Anything that had actually -- that I had shared      8     with the previous attorneys that I still had I would      9     have provided to Mr. Crawford.</p> <p>10      <b>Q. Okay.</b>      11       A. I'm not sure that there was any -- I'm not sure      12     that the OLS analysis was ever even -- anything done      13     other than just sort of looking at that real quickly in      14     Excel. I'm not sure that was ever reduced to anything      15     that -- that would have been transmissible either to      16     attorneys or to Mr. Crawford. But certainly anything      17     else that would fall in that category was provided to      18     him.</p> <p>19      <b>Q. Do you still have the OLS Excel file?</b>      20       A. It's -- I guess it's possible. I haven't gone      21     back to look for it because I think, you know, it's      22     superseded by the EI analysis. But it's possible that      23     it's -- I could look. It's possible I guess.</p> <p>24      <b>Q. Without telling me the contents, was the OLS</b>      25     <b>consistent with the EI?</b></p>	<p style="text-align: right;">Page 32</p> <p>1       on CVAP for example, and CVAP doesn't account for      2     turnout. So R x C builds turnout estimation into the      3     estimation of the vote parameters, and that can -- in      4     that instance it can produce quite different results      5     than what you would get where -- where in the exact same      6     analysis for black voters there would be virtually no      7     substantive difference. So I'm never very surprised      8     if -- if the quality of data is low, which for -- that      9     means anything other than surnames for Hispanic voters,      10     it's just hard to say for sure if you're going to get a      11     clean -- a clean result out of the -- out of the OLS.</p> <p>12      <b>Q. I think I understand. But if you used voters</b>      13     <b>for your OLS and you used the -- either the -- an icon</b>      14     <b>Bayesian database that would solve that problem,</b>      15     <b>correct?</b></p> <p>16       A. Yeah. I would expect you'd get a much -- you'd      17     get a much less problematic OLS result. I don't have --      18     I haven't sort of stress-tested this on this particular      19     set of data, and I could be wrong about where the --      20     where the -- where the noise in the OLS was coming from,      21     but my suspicion at the time was that it was coming      22     from -- from the lack of turnout information.</p> <p>23      <b>Q. Fair enough. I don't have any more questions</b>      24     <b>about that.</b>      25       Are there any other reports that you've</p>

<p style="text-align: right;">Page 33</p> <p>1      <b>done for SBISD that you haven't disclosed to us?</b></p> <p>2      A. That's -- I mean, I think we've covered all of</p> <p>3      what I recall of information, types of information that</p> <p>4      I've shared with -- with the attorneys, or the attorneys</p> <p>5      shared with the board, or that I was present to discuss</p> <p>6      with the board.</p> <p>7      <b>Q. And as we're sitting here today you have not</b></p> <p>8      <b>provided the plaintiff with that data for the OLS or the</b></p> <p>9      <b>data for the EI, correct?</b></p> <p>10     A. Correct.</p> <p>11     <b>Q. Thank you, sir. So let's just go a little bit</b></p> <p>12     <b>more into your history, if you don't mind.</b></p> <p>13     <b>How many times -- how many times have you</b></p> <p>14     <b>been an expert in a case involving Section 2 of the</b></p> <p>15     <b>Voting Rights Act?</b></p> <p>16     A. It would be 40 or 50 times.</p> <p>17     <b>Q. Yeah. A bunch. Have you ever been an expert</b></p> <p>18     <b>for an individual voter challenging an election statute?</b></p> <p>19     A. I don't know. Individual voter challenging an</p> <p>20     election statute?</p> <p>21     <b>Q. As opposed to working for the entity.</b></p> <p>22     A. So mostly by happenstance, or whatever, I</p> <p>23     mostly work for entities, I think probably because I</p> <p>24     started doing this locally mostly in -- in the area of</p> <p>25     drawing districts for entities, and then ended up moving</p>	<p style="text-align: right;">Page 35</p> <p>1      A. I think Frost would have been -- I think Frost</p> <p>2      was the redistricting.</p> <p>3      <b>Q. Right, right, right. That was the 1997 -- '95,</b></p> <p>4      <b>'97 reset. I'm sorry.</b></p> <p>5      A. No. This was the two thousand -- this is</p> <p>6      when --</p> <p>7      <b>Q. Oh. This is the mid-decade --</b></p> <p>8      A. Yeah. So this is when I worked -- so I worked</p> <p>9      for the legislative redistricting board because the</p> <p>10     state didn't -- didn't draw lines right. So the</p> <p>11     redistricting board drew the lines, but they couldn't</p> <p>12     draw the congressional lines. So the court drew the</p> <p>13     congressional lines. So that's my congressional plan.</p> <p>14     The court actually asked me to give them advice about</p> <p>15     how they should go about that, "what would you do, what</p> <p>16     would a neutral plan look like?" So I gave them some</p> <p>17     advice, and they acknowledged in the decision where they</p> <p>18     released the plan that they had appreciated my input, or</p> <p>19     whatever.</p> <p>20     So I told everybody, I was like, "This is a</p> <p>21     dream for somebody who studies Congress. I actually had</p> <p>22     a hand in a congressional plan." And they held exactly</p> <p>23     one election under it, and then the state -- the state</p> <p>24     just like gutted it like a fish. And so -- and so then</p> <p>25     this is where the Frost and the other congressional</p>
<p style="text-align: right;">Page 34</p> <p>1      into sort of the Section 2 issues beyond drawing the</p> <p>2      districts. So I mostly worked for entities, but I</p> <p>3      have -- I mean, I worked on cases where -- where</p> <p>4      representatives were challenging district plans, but I</p> <p>5      don't know -- I mean, I don't think they were</p> <p>6      challenging them as individual voters. I think their</p> <p>7      challenge was -- I could be wrong. I don't know why</p> <p>8      they were -- what their actual standing was.</p> <p>9      <b>Q. Do you remember the representatives? Do you</b></p> <p>10     <b>mean state representatives, or do you mean other</b></p> <p>11     <b>governmental officials, incumbents?</b></p> <p>12     A. Well, I worked for a group of Democratic</p> <p>13     representatives I think organized by Martin Frost --</p> <p>14     <b>Q. Okay.</b></p> <p>15     A. -- challenging a congressional plan. I worked</p> <p>16     for the Democratic Party in Florida, a challenge</p> <p>17     related to I think the congressional districts in</p> <p>18     Florida.</p> <p>19     <b>Q. And do you have a time period for that, please?</b></p> <p>20     <b>The '90s?</b></p> <p>21     A. The '90s I think.</p> <p>22     <b>Q. And the Frost would have been in the '90s, too?</b></p> <p>23     <b>That was the Bush v. Vera case, right?</b></p> <p>24     A. No.</p> <p>25     <b>Q. Okay.</b></p>	<p style="text-align: right;">Page 36</p> <p>1      intervenors, they filed suit. They wanted to -- you</p> <p>2      know, they wanted to -- basically the point of their</p> <p>3      suit was that the state couldn't engage in a</p> <p>4      mid-redistricting, or mid-season redistrict, whatever,</p> <p>5      that it was already an official plan.</p> <p>6      <b>Q. So you drew the plan in Balderas. That's the</b></p> <p>7      <b>2000 case. And then you were an expert for the</b></p> <p>8      <b>intervenors in the 2003 case?</b></p> <p>9      A. Yes. I didn't draw the plan, but I --</p> <p>10     <b>Q. Advised?</b></p> <p>11     A. -- provided some guidelines in what I thought</p> <p>12     was appropriate for the court to use, and then testified</p> <p>13     on behalf of that plan, when the -- when the state</p> <p>14     replaced the plan and then there was a suit over whether</p> <p>15     the -- whether that mid-decade redistricting was</p> <p>16     appropriate or not. So that was with the -- it was a</p> <p>17     Democratic congressman who intervened. I don't remember</p> <p>18     exactly who all was in that, but -- but I remember the</p> <p>19     lawyer for the state, the first question when I was put</p> <p>20     on the stand was, you know, "Why did you switch sides?"</p> <p>21     And I said, "I didn't switch sides. You did. This is</p> <p>22     the" -- "this is the exact plan, you know, that I" --</p> <p>23     "when I was working for you that we helped the court</p> <p>24     to" -- because the Attorney General's Office was</p> <p>25     involved as well in trying to provide a neutral plan</p>

<p style="text-align: right;">Page 37</p> <p>1       that the court could use. And so --</p> <p>2       <b>Q. And that lawyer was Andy Taylor?</b></p> <p>3       A. I think it was Andy at that point. Yeah.</p> <p>4       Yeah. That would have been back in Andy's day.</p> <p>5       <b>Q. So it sounds like those were drawing districts.</b></p> <p>6       <b>Did you ever do racially polarized voting --</b></p> <p>7       A. No, I was not -- sorry. I was not drawing</p> <p>8       districts in the -- when I was working for the</p> <p>9       congressional intervenors because they were just</p> <p>10      defending the court drawn district against the -- the</p> <p>11      district the state had drawn to replace it. But I don't</p> <p>12      remember the entire scope of what -- what I was actually</p> <p>13      looking at relative to the -- to the new draw as opposed</p> <p>14      to the court draw.</p> <p>15       <b>Q. Fair enough.</b></p> <p>16       A. And I think in -- if I'm remembering the</p> <p>17       Florida case right, it did -- it was a -- it was voting</p> <p>18       rights issues related to the treatment of Hispanic</p> <p>19       voters in Florida. And I think it was also a</p> <p>20       congressional plan, specifically sort of how voters in</p> <p>21       southeast versus southwest Florida were treated in terms</p> <p>22       of drawing Hispanic districts.</p> <p>23       <b>Q. What's the scope of your engagement in your</b></p> <p>24       <b>contract, if you don't mind me asking?</b></p> <p>25       A. At least my understanding of it -- you know, I</p>	<p style="text-align: right;">Page 39</p> <p>1       issue. But I think also it's -- in my experience, and I</p> <p>2       don't think I'm alone in this, you know, the courts have</p> <p>3       not -- this is not an area broadly in which the courts</p> <p>4       have distinguished themselves in making clear what it is</p> <p>5       they want entities to do or plaintiffs to do or lawyers</p> <p>6       to do. So, I mean, I have my own sort of view of kind</p> <p>7       of how this -- how this makes sense. But I recognize</p> <p>8       that the term is used in a variety of ways. It's used</p> <p>9       to indicate, by some people, to indicate -- for example,</p> <p>10      many plaintiffs' experts believe that the definition of</p> <p>11      racially polarized voting is if 50 percent plus one of</p> <p>12      the minority voters vote for candidate A and 50 percent</p> <p>13      plus one of nonminority voters vote for candidate B then</p> <p>14      that's racially polarized voting, and that's -- I don't</p> <p>15      think that's true in the -- in itself I don't think</p> <p>16      that's true in the legal sense, and I don't actually</p> <p>17      think it's even an appropriate label for what's going on</p> <p>18      there.</p> <p>19           But, you know, that's an old dispute going</p> <p>20      all the way back to Brennan about -- in which I think</p> <p>21      Brennan captured exactly the issue there, is -- you</p> <p>22      know, I think -- I'm not sure everybody never says it,</p> <p>23      but I think in the current debate what Brennan would</p> <p>24      like is for people to come up with a name for that that</p> <p>25      isn't racially polarized voting in the sense that, you</p>
<p style="text-align: right;">Page 38</p> <p>1       probably pay less attention to these contracts than I</p> <p>2       should.</p> <p>3       <b>Q. If you want to refresh your recollection --</b></p> <p>4       A. I just say what I -- what I agreed to before</p> <p>5       this was drawn up, and this looked to me like it didn't</p> <p>6       exceed that, was that I would provide a report that was</p> <p>7       essentially responsive to Dr. Stein's report, so that</p> <p>8       that was the extent of my involvement, was to provide</p> <p>9       response and commentary to his report as opposed to</p> <p>10      analysis itself. It was -- my role was to -- basically</p> <p>11      to provide a critique and context for Dr. Stein's</p> <p>12      report.</p> <p>13       <b>Q. And so you have been hired in the past by SBISD</b></p> <p>14       <b>to determine whether or not elections are racially</b></p> <p>15       <b>polarized in SBISD elections, correct?</b></p> <p>16       A. That was certainly one of the tasks I was asked</p> <p>17      to perform previously, yes.</p> <p>18       <b>Q. Given your time as an election law expert,</b></p> <p>19       <b>racially polarized voting expert, and your association</b></p> <p>20       <b>with SBISD since I guess the early 2000s, do you believe</b></p> <p>21       <b>that elections in SBISD are racially polarized?</b></p> <p>22       A. I try pretty hard not to reach legal</p> <p>23      conclusions in my work as an expert partly because I'm</p> <p>24      not a lawyer, and it always pisses me off when lawyers</p> <p>25      reach expert conclusions. And so there's sort of a turf</p>	<p style="text-align: right;">Page 40</p> <p>1       know, the public understanding of that is -- is that</p> <p>2       voting is polarized by race, meaning by some sentiment</p> <p>3       or concerns of the race of voters or the race of</p> <p>4       candidates, as opposed to just these two groups maybe</p> <p>5       voting differently for the same reason lots of other</p> <p>6       groups might vote differently.</p> <p>7       <b>Q. I think I -- I understand that.</b></p> <p>8       A. Yeah. I'm just not -- I'm not sure if</p> <p>9       you're -- what is -- what is it you're asking me?</p> <p>10      Have I reached a conclusion, a legal --</p> <p>11       <b>Q. No.</b></p> <p>12       A. In a legal sense, no.</p> <p>13       <b>Q. I'm asking you as an expert are Latinos</b></p> <p>14       <b>politically cohesive in SBISD elections?</b></p> <p>15       MR. CRAWFORD: I'm going to object to the</p> <p>16      extent that it's outside the scope of this engagement.</p> <p>17      And I'll let Dr. Alford make that determination but --</p> <p>18       <b>Q. (BY MR. GOLANDO) You can still answer, sir.</b></p> <p>19       A. I'd say, you know, based on -- I mean, for</p> <p>20      example, based on the -- on Dr. Stein's report I'd say</p> <p>21      there's evidence of modest cohesion among Latino voters.</p> <p>22      So there's certainly no evidence of the sort we would</p> <p>23      see in the black voters. I don't think Hispanic voters</p> <p>24      are voting 90 percent one direction or another. But</p> <p>25      there's certainly evidence that suggests that at least</p>

<p style="text-align: center;">Page 41</p> <p>1      in some of the elections more than -- more than a bare      2      majority of Hispanic voters are favoring Hispanic      3      candidates.</p> <p>4      <b>Q. Based on your experience as a election observer</b>      5      <b>and an analyst for SBISD in the last 20 years of your</b>      6      <b>employment here, or engagement here, do you believe in</b>      7      <b>your expert opinion that Latinos are politically</b>      8      <b>cohesive outside of the Stein report?</b></p> <p>9      A. I would say modestly to moderately cohesive.</p> <p>10     <b>Q. Do you believe that, same question, as to</b>      11     <b>Anglos? Are they politically cohesive in SBISD</b>      12     <b>elections?</b></p> <p>13     MR. CRAWFORD: Same objection as before to      14     the extent it exceeds the scope of his engagement.</p> <p>15     MR. GOLANDO: Yes, sir.</p> <p>16     A. I think it's harder to say they are, but I      17     think -- on balance I'd say moderately co -- modestly --      18     again, sort of modestly to moderately cohesive. So      19     in -- again, in the sense of the sort of Gingles 2 and      20     Gingles 3 threshold, not in sort of the broader totality      21     of the circumstances. But just addressing it as, you      22     know, what -- what my guess would be about Gingles 2 or      23     my guess about where you would be on Gingles 3 that's --      24     that's what I would guess. And I think that's roughly      25     what Dr. Stein's analysis suggests.</p>	<p style="text-align: center;">Page 43</p> <p>1      University of Georgia before I came to University of      2      Georgia. We didn't actually overlap, but I had had      3      conversations with him. At that point prior to -- to      4      actually working with him I had met him at a convention.      5      And he's the one who at that time was the -- I can't      6      remember if he was the -- I think -- yeah. He was the      7      department head at that time. Georgia actually tried to      8      hire me twice. And the first time -- my former mentor      9      from U of H, David -- Dr. David Brady was the chair, and      10     he had contacted me and tried to work out a deal to get      11     me to come to Rice. And I really wasn't -- I hadn't      12     been at Georgia very long, and I wasn't ready to go. So      13     I ended up turning it down, and he was very unhappy      14     about that. And then a year later circumstances had      15     changed. I was in the middle of a divorce.</p> <p>16     <b>Q. I'm sorry.</b></p> <p>17     A. I was not very happy with my colleagues at the      18     University of George. And by then Dr. Stein was the      19     chair. And so he called up and said, you know, "We      20     would like you to come to Rice." And I said, you know,      21     "I'm not a very good negotiator, so whatever you offer      22     me I'm going to take it." And he said, "I'm not a good      23     negotiator either because whatever you want we'll give      24     it to you." And so we then worked out something that      25     sort of fell within those -- within that range, and I</p>
<p style="text-align: center;">Page 42</p> <p>1      <b>Q. (BY MR. GOLANDO) Would you based on your</b>      2      <b>experience as an expert and a observer of SBISD</b>      3      <b>elections in your 20 years here and your prior</b>      4      <b>engagement do Latinos support different candidates than</b>      5      <b>Anglos in SBISD elections?</b></p> <p>6      A. Sometimes.</p> <p>7      <b>Q. How often?</b></p> <p>8      A. I don't know how often, but it certainly      9      happens.</p> <p>10     <b>Q. Can you recall a time when they didn't based on</b>      11     <b>your analyses and your expertise?</b></p> <p>12     A. I don't know. I mean, I can't think of a      13     specific -- a specific example, but I -- but I'm not at      14     all sure that that is -- that it's generally the case      15     across elections that -- in fact, I suspect it's not.      16     My guess is that there are elections in which both      17     Anglos and Hispanics are supporting the same candidates,      18     but I don't -- again, I -- I don't know for certain, but      19     that's my guess.</p> <p>20     <b>Q. Okay. I understand. We're going to talk a</b>      21     <b>little bit about Bob Stein now. Do you know Professor</b>      22     <b>Stein?</b></p> <p>23     A. I do.</p> <p>24     <b>Q. How do you know him, sir?</b></p> <p>25     A. He hired me to come to Rice. He had been at</p>	<p style="text-align: center;">Page 44</p> <p>1      was hired. And David Brady never forgave me for      2      allowing Stein to outhire him on the recruiting front.      3      So -- but I've known him since I -- I knew him before I      4      came to Rice, but certainly since I came to Rice, and      5      we're -- we've always been close colleagues. We're      6      close personal friends. Our families are friends. He      7      was just having dinner with my daughter in Washington,      8      D.C. over the weekend.</p> <p>9      <b>Q. Oh. Wow.</b></p> <p>10     A. So we remain very close.</p> <p>11     <b>Q. Do you know his reputation as a scholar?</b></p> <p>12     A. Yes.</p> <p>13     <b>Q. What is his reputation as a scholar?</b></p> <p>14     A. It's a excellent rep -- he's very prolific.      15     He's very well-respected. He's moved around across a      16     variety of areas in his career and always had -- the      17     areas he's worked in has always ended up being important      18     work, widely recognized work, so --</p> <p>19     <b>Q. How would you personally rate him as a scholar,</b>      20     <b>Professor Stein?</b></p> <p>21     A. On a -- what are we doing here? A scale of one      22     to ten or --</p> <p>23     <b>Q. Is he an expert in his studies?</b></p> <p>24     A. Yes.</p> <p>25     <b>Q. Okay. Is he -- is he at the top levels of his</b></p>

<p style="text-align: center;">Page 45</p> <p>1      <b>scholarly research?</b></p> <p>2      A. I would say in the areas that he works in he 3      always ends up producing work that is among the best of 4      the work that's done in that area. So I would say that 5      both -- when he was doing things like the distribution 6      of federal funds, pork barrel, his more recent work on 7      things like ballot form and access, that sort of stuff, 8      again very -- he does very good, very high quality work.</p> <p>9      <b>Q. Would you call him an expert in social science 10     statistical research?</b></p> <p>11     A. That's a time-bound question. So when I came 12     out of graduate school Stein and I both would have been 13     experts in statistical social science research. We were 14     like go-to people. We were, you know, the young Turks 15     and, you know, drove all our old professors crazy by, 16     you know, asserting they had no clue what they were 17     doing and we did. But those things change over time. 18     So, you know, he's a -- he's a extremely competent data 19     analyst and is I -- I would say among people who are not 20     actually political methodologists he's -- is as skilled 21     as anybody doing work in social sciences today. But 22     he's -- political science didn't really have 23     methodologists when he and I came out of graduate 24     school. And now we have -- we have people in our 25     department who we hire as methodologists. They only</p>	<p style="text-align: center;">Page 47</p> <p>1      <b>Q. Yeah. Me too.</b></p> <p>2      A. My -- the professor who taught me methods at 3      university of Iowa said, "By the end of this course 4      you'll not only recognize that OLS is the superior 5      research method, you'll also recognize that it's a way 6      of life and will be the only thing you dream about."</p> <p>7      And I thought that was an exaggeration, but I 8      honestly -- it is an approach to life. You know, life 9      is about trying to understand the world around you. And 10     to this day when I'm -- when something puzzles me, like 11     the behavior of one of my daughters for example, I 12     actually like find myself unable to not think of it as 13     an OLS equation. So, yes, I -- I worship at the alter 14     of ordinary least squares regression.</p> <p>15     <b>Q. Me too. I do. And I remember my scopes and 16     methods class. I know exactly how you feel.</b></p> <p>17     <b>So is ordinary least squares a 18     scientifically verifiable way to evaluate racially 19     polarized voting?</b></p> <p>20     A. Yes.</p> <p>21     <b>Q. Okay. Is OLS a technique generally accepted in 22     the social scientific community?</b></p> <p>23     A. Yes.</p> <p>24     <b>Q. Has OLS analysis been subjected to peer review 25     and publication?</b></p>
<p style="text-align: center;">Page 46</p> <p>1      teach methods. They only research methods. We're not 2      in that category. Neither of us are methodologists in 3      that sense. We're not going to develop the next -- 4      we're not Gary King --</p> <p>5      <b>Q. Right.</b></p> <p>6      A. -- which is -- I guess you could say for pretty 7      much everybody in the United States. But he 8      certainly -- he employees up-to-date methods, and he 9      does them accurately and skillfully for the -- for his 10     research question. But he's more interested in 11     answering a research question than he is in developing a 12     methodology.</p> <p>13     <b>Q. I don't blame him. Do you agree that Bob 14     Stein's expert opinion is relevant to the task at hand?</b></p> <p>15     A. Yes.</p> <p>16     <b>Q. Okay. Would you agree that racially polarized 17     voting analyses using ecological regression rest on 18     scientifically reliable foundations generally?</b></p> <p>19     A. Yes.</p> <p>20     <b>Q. Would you call Bob Stein an expert or a top 21     scholar in analyzing voter behavior?</b></p> <p>22     A. Yes.</p> <p>23     <b>Q. Are you familiar with the use of ordinary least 24     squares?</b></p> <p>25     A. Oh, yes.</p>	<p style="text-align: center;">Page 48</p> <p>1      A. Yes.</p> <p>2      <b>Q. Okay. Can OLS be tested and verified?</b></p> <p>3      A. Yes.</p> <p>4      <b>Q. Does OLS have a known error rate?</b></p> <p>5      A. It -- assuming you meet the assumptions of OLS 6      it is -- what's called a BLUE method is the best linear 7      unbiased estimator. So -- but that means you have to 8      meet the -- the basic assumption. So, yes, it's -- 9      there is a way to test the accuracy. OLS provides 10     measures of the stability and usability of its results. 11     But like any technique they do depend on meeting the 12     assumptions.</p> <p>13     <b>Q. Do you believe that Dr. Stein is an expert 14     qualified by knowledge, skill, experience, training, and 15     education?</b></p> <p>16     A. Yes.</p> <p>17     <b>Q. Do you believe that Dr. Stein's opinion is 18     based on sufficient data?</b></p> <p>19     A. So we're getting into the crux of things here. 20     I think the -- I think the data he has is probably 21     enough to answer the question. I don't think it's 22     necessarily the best data he could have. But I don't 23     think the -- and I don't -- I don't disagree with the 24     results of the analysis he did as it is, but I don't 25     think -- I don't think it's sufficient to answer at</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 least some of the questions that routinely have to be 2 answered in my view in a full racially polarized voting 3 analysis.</p> <p>4     <b>Q. I want to be very clear. We'll get to see your</b> 5     <b>problems with the Stein report in a moment. I promise</b> 6     <b>you. But does the data he used, is it sufficient to</b> 7     <b>determine the outcome?</b></p> <p>8         A. I think the -- yes, I think so.</p> <p>9     <b>Q. Do you believe that Dr. Stein's opinion is the</b> 10     <b>product of reliable principles and methods?</b></p> <p>11         A. Again, I don't want to over endorse or under 12         endorse. There's -- yeah, I think he's running OLS 13         correctly. I don't doubt that those are the right 14         parameters coming out of OLS. I -- I just think it's 15         not -- the data has been aggregated in a way that I 16         think is -- I have questions about the way the data has 17         been aggregated. I have questions about the quality of 18         the input data on the demographic side, the BISG result, 19         and I have questions about at least some of the ways in 20         which election result data was treated. So I don't 21         exactly -- it's not the data itself that's problematic, 22         but the way -- you can't divorce that from the way it's 23         been aggregated for input into the -- into estimation. 24         And I think that's where -- where we have disagreements.</p> <p>25     <b>Q. I think that's a reasonable thing to say. Do</b></p>	<p style="text-align: right;">Page 51</p> <p>1 start -- because, again, "cohesive" is a -- is not a 2 binary term. Cohesive is a -- is a term that's being 3 applied to what is, in fact, a continuous measure from 4 zero cohesion to perfect cohesion. And so if a measure 5 goes from no cohesion to perfect cohesion there's always 6 a question of "what do people mean by cohesion?" And I 7 know some people mean by cohesion anything other than 8 zero, which means actually by definition in virtually 9 every election in the United States every group is 10 cohesive. I take that to be a nonsensical -- I know 11 that I'm in the minority here of my -- at least some of 12 the experts. But I take that to be nonsensical with 13 regard to providing that information to the court 14 because -- because the court has said that Gingles 2 is 15 a threshold test. And if the threshold is by definition 16 always met then it doesn't belong in the Gingles -- it's 17 not a threshold at all. It's not even a test. There's 18 no reason -- there's no reason to even have it there.</p> <p>19         So, you know, we can go down that slippery 20         slope. And you know, we can start at 50 percent, which 21         is zero cohesion. We can start at 100 percent, which is 22         perfect cohesion. And then the question is sort of 23         where does -- where does cohesion fall on that scale. 24         And I don't believe it's the entire scale. So one way 25         of thinking about that is this -- this actually isn't a</p>
<p style="text-align: right;">Page 50</p> <p>1     <b>you believe that Dr. Stein has applied the principles</b> 2     <b>and methods reliably to the facts of the case? You may</b> 3     <b>disagree. But has he done so reliably?</b></p> <p>4         A. So it's interesting how certain things come 5         back routinely in depositions. So within the narrow 6         meaning, the narrow statistical meaning of reliability, 7         yes.</p> <p>8     <b>Q. Perfect answer. I appreciate it. All right.</b> 9     <b>Let's talk about racially polarized voting generally,</b> 10     <b>and then I promise you we'll get to your words. I</b> 11     <b>promise. I just want to make sure --</b></p> <p>12         A. It's fine with me if we don't.</p> <p>13     <b>Q. Because I think primaries are important. And,</b> 14     <b>again, if I ask you a question that doesn't make sense</b> 15     <b>it's not your fault. It's my fault. Okay?</b></p> <p>16     <b>If 90 percent of Latino voters voted for</b> 17     <b>one candidate, are they politically cohesive together in</b> 18     <b>a given jurisdiction?</b></p> <p>19         A. Yes.</p> <p>20     <b>Q. Okay. If 80 percent of Latino voters voted for</b> 21     <b>one candidate, are they politically cohesive together?</b></p> <p>22         A. Yes.</p> <p>23     <b>Q. Okay. If 70 percent of Latino voters voted for</b> 24     <b>one candidate, are they politically cohesive together?</b></p> <p>25         A. I don't know. I mean, that's where I would</p>	<p style="text-align: right;">Page 52</p> <p>1     scale from 50 to 100, of course, because 50 would 2     suggest half cohesion, and it's zero. So turn it into 3     what it really is, is zero to 100 scale. And in that 4     zero to 100 scale 75 is actually at 50 percent cohesion. 5     It's half of the values are less cohesive. Half would 6     be more cohesive. So that's a kind of midrange of 7     cohesion, and so that's sort of roughly -- in my view 8     roughly you clearly have cohesive behavior at sort of 9     80 -- 75, 80, 90 percent. But the question of what you 10    have at -- once you get to something like 70 or 60 or 11    51, I mean, I just think you're -- again, the court has 12    provided exactly zero guidance here. So I just try to 13    be careful in the use of the language. So I think at 70 14    you're starting into a -- you're getting into a range 15    where you might say there's -- we talked earlier on 16    things like modest or moderate cohesion. So there's 17    some moderate level of cohesion there. And I think 18    that's -- sort of in that 60 to 70 percent range is what 19    I think of as moderate or modest cohesion. Below 65, 20    certainly below 60, I don't really think that's -- if 21    that's cohesion, then, again, it doesn't -- in a Gingles 22    sense then cohesion doesn't matter because cohesion is 23    always greater than 50 so --</p> <p>24     <b>Q. So just to be clear, so from 60 to 70 it's</b> 25     <b>moderate cohesion? Sixty to 75. I don't want to</b></p>

<p style="text-align: right;">Page 53</p> <p>1       <b>misstate --</b></p> <p>2       A. Yeah. Well, yeah, I mean, it's -- in that sort</p> <p>3       of middle range I think the -- the question, again, it's</p> <p>4       very -- it's not hard to see. So I don't think many</p> <p>5       people would dispute that 80 to 100 is cohesion. And in</p> <p>6       that sense if you were going to make it symmetric then</p> <p>7       50 to 70 would be noncohesion. Right? So if the upper</p> <p>8       20 percent is clearly cohesion then the lowest possible</p> <p>9       20 percent, if you're going to have a scale that</p> <p>10      balances in a -- you know, in a kind of a normal sort of</p> <p>11      scale sense, then you could describe everything below 70</p> <p>12      as not cohesive and -- and sort of, you know, kind of --</p> <p>13      then you'd have kind of a middle range in there</p> <p>14      somewhere.</p> <p>15      <b>Q. If 70 percent of the Latino community supports</b></p> <p>16      <b>a candidate, that means that 30 percent didn't, correct?</b></p> <p>17      A. Correct.</p> <p>18      <b>Q. So two-to-one?</b></p> <p>19      A. Yep.</p> <p>20      <b>Q. More than two-to-one really, right?</b></p> <p>21      A. (Moving head up and down.)</p> <p>22      <b>Q. And that's still not cohesive enough from your</b></p> <p>23      <b>perspective?</b></p> <p>24      A. It's -- again, it's -- I don't know what you</p> <p>25      mean by "cohesive enough." But I don't think it's</p>	<p style="text-align: right;">Page 55</p> <p>1       majority or not a majority. That's the dichotomy, and</p> <p>2       because it's a dichotomy it has a bright line. That's</p> <p>3       the great thing about dichotomies: "yes" or "no." If</p> <p>4       this is a "yes" or "no" question, then where is the --</p> <p>5       where does the -- where does the "no" become a "yes"?</p> <p>6      <b>Q. Fair enough.</b></p> <p>7      A. And so I think -- my preference because I'm not</p> <p>8       making that legal decision, it's not up to me to say --</p> <p>9       I'm always getting pressured, you know, "but you're the</p> <p>10      expert, so in your expert opinion is this legally" --</p> <p>11      you know, "is this cohesive voting"? I just want to</p> <p>12      tell the court how cohesive the voting is from zero to</p> <p>13      100. Right? And if you want -- you want to force me to</p> <p>14      put a term on it then in the middle I can put a term</p> <p>15      like "moderate" or whatever. And then if the judge</p> <p>16      thinks -- the number is still there. In your example</p> <p>17      the 70 is there. If a judge thinks that's what -- what</p> <p>18      the court means by cohesive voting, have at it. I'm</p> <p>19      glad I don't have to make that decision.</p> <p>20      <b>Q. Me too, for the record. And I want to be very</b></p> <p>21      <b>clear. I'm not interested in your legal opinion. I</b></p> <p>22      <b>mean, I am generally. You're a nice guy. You're a</b></p> <p>23      <b>smart guy. But for the testimony I'm only interested in</b></p> <p>24      <b>your expert opinion as a social science researcher. And</b></p> <p>25      <b>I think I understood your question so -- or your answer</b></p>
<p style="text-align: right;">Page 54</p> <p>1       helpful given the nature not only of what the court</p> <p>2       is -- so there are two questions here I think. I mean,</p> <p>3       one is is it cohesive enough to clear the threshold</p> <p>4       test? And that's -- then there's another question</p> <p>5       because, of course, racially polarized voting enters</p> <p>6       twice, one is in its mechanical Gingles 2 and 3, and</p> <p>7       then again in the totality of the circumstances. And</p> <p>8       while I don't think those should be -- given their</p> <p>9       proximity to each other I think it's inefficient to have</p> <p>10      them mean different things. I'm aware that the -- from</p> <p>11      cases I've been involved in that currently there are a</p> <p>12      lot of judges who want to make those two very different</p> <p>13      things, the Gingles 2 and 3 racially polarized voter,</p> <p>14      and the totality of circumstances racially polarized</p> <p>15      voting. You know, whatever the judges want to do I'm</p> <p>16      fine with. I give them the information. They make</p> <p>17      sense out of it.</p> <p>18      But I think it's an awkward situation both</p> <p>19      in terms of analysis and in terms of the law to say that</p> <p>20      they're both -- we're going to call both of them</p> <p>21      racially polarized voting, but they're going to be</p> <p>22      defined in very different ways and very different</p> <p>23      implications. So I just think if the Gingles 2 test</p> <p>24      is -- are minority voters voting cohesively then that's</p> <p>25      either going to need to be defined as in are they a</p>	<p style="text-align: right;">Page 56</p> <p>1       <b>to my bad questions.</b></p> <p>2       <b>I'm asking the same questions about Anglo</b></p> <p>3       <b>voters because I wonder if there's a difference in your</b></p> <p>4       <b>mind. If 90 percent of Anglo voters support one</b></p> <p>5       <b>candidate, are they politically cohesive?</b></p> <p>6      A. Yes.</p> <p>7      <b>Q. Eighty percent?</b></p> <p>8      A. Yes.</p> <p>9      <b>Q. Seventy percent?</b></p> <p>10     A. I think you're getting -- again, now you're in</p> <p>11     a range where they're sort of what you might describe as</p> <p>12     modest or moderate cohesion. It's certainly in that --</p> <p>13     in that kind of range. And I think that's where -- if</p> <p>14     you think about sort of functional definition kind of</p> <p>15     thing, what's going on here, there it becomes clear the</p> <p>16     two things are interacting with each other. Right? And</p> <p>17     that's what I think is both important to recognize, but</p> <p>18     also I think problematic in the sense that -- on the --</p> <p>19     on the Gingles 2 side there's just this question of</p> <p>20     minority cohesion. On the Gingles 3 side there's</p> <p>21     minorities voting or majorities voting cohesively so as</p> <p>22     to usually defeat. Well, so as to usually defeat the</p> <p>23     level then of what would be defined as majority cohesion</p> <p>24     is going to be on a sliding scale depending on minority</p> <p>25     cohesion.</p>

<p style="text-align: center;">Page 57</p> <p>1        And weirdly enough it's going to slide in      2        the direction that the less cohesive minorities are the      3        more likely it is that at the same levels of cohesion      4        majorities are voting cohesively to defeat the preferred      5        candidate. If the preferred candidate is only getting      6        51 percent of the vote, then a majority that's in fact      7        splitting its vote almost perfectly evenly can still be      8        sufficiently cohesive to defeat the candidate. So this      9        is a weird scale in which as -- the further away we move     10      from racially polarized voting the easier it is to find     11      racially polarized voting in that sense because, again,     12      these are -- in essence they are no longer -- they're no     13      longer absolute -- again, a threshold test must mean     14      that you can -- that you can in isolation answer that     15      question. And judges in my experience frequently join     16      two and three together to ask what they call the -- the     17      Gingles 2 and 3 are the racially polarized voting     18      question. Once you join them together they are not     19      threshold. Two is not a threshold test if it doesn't     20      stop the inquiry at two.</p> <p>21      <b>Q. I understand.</b></p> <p>22      A. And so I don't have the solution to that issue,      23      but it is problematic. And so that's why I think it's      24      better to be imprecise in the language about -- about      25      calling something cohesion or not cohesion. It's better</p>	<p style="text-align: center;">Page 59</p> <p>1        <b>about it already, but I want to make sure I get you on</b>      2        <b>the record.</b></p> <p>3        <b>What do you believe racially polarized</b>      4        <b>voting is, and how would you define it?</b></p> <p>5        A. So I would define racially polarized voting as,      6        in the broadest sense, as a situation where -- where      7        voting is being affected by racial considerations at a      8        level that -- you know, given the -- the sort of      9        numerical conditions and sort of things you assess in     10      Gingles 1, that you have a situation where minorities     11      are not able to elect minority candidates in a     12      particular setting and would be able to in the --     13      whatever the legally available alternative settings are.</p> <p>14      <b>Q. I think I understand that. So I'm going to ask</b>      15      <b>you a couple of general questions about that, if you</b>      16      <b>don't mind.</b></p> <p>17      <b>If 90 percent of the Latinos support</b>      18      <b>candidate A and 75 percent of the Anglos support</b>      19      <b>candidate B in the same race, is that racially polarized</b>      20      <b>voting, assuming your -- your first part of your</b>      21      <b>definition?</b></p> <p>22      A. This is where -- I know you're going to be      23      happy to hear this. But I don't think you can determine      24      if voting is racially polarized in a single election.      25      You can say the election is compat -- that's an election</p>
<p style="text-align: center;">Page 58</p> <p>1        to be imprecise about that and to just look at exactly      2        how all that's operating and then think about what that      3        means because ultimately, you know, Gingles 1, 2, and 3      4        is about determining if there's a solution in order to      5        answer the question about whether there's a tort. And      6        thinking about the solution is where you really do have      7        to take it all into account because if cohesion is      8        really low on the part of minorities then if -- if it's      9        also the case that it's very difficult to get a district     10      that's above majority, then the district is not going to     11      be a district that's typically going to work. Right?     12      It isn't going to solve the -- it isn't going to solve     13      the problem. Fifty percent plus one voters lets you     14      control the district as long as you're perfectly     15      cohesive. Well, if your cohesion level is 52 percent,     16      the district isn't going to do anything. Right? It's     17      going to give you 25 percent of the vote. It's not     18      going to win anything. It's not a solution to the     19      problem. And, in fact, the problem is not the drawing     20      of district lines. Right? The problem was very low     21      cohesion. You know, splitting your vote doesn't let you     22      control politics. And so that's -- that's my short     23      answer.</p> <p>24      <b>Q. Fair enough. All right. Let's talk a little</b>      25      <b>bit about racially polarized voting. We've talked a lot</b></p>	<p style="text-align: center;">Page 60</p> <p>1        that's compatible with -- with the existence of racially      2        polarized voting, but I don't think it establishes      3        racially polarized voting. And I don't think it's      4        really -- you can given that -- if that's the fact      5        pattern, I got one election in that fact pattern, I have      6        no idea if voting in that jurisdiction is racially      7        polarized or not. All I can tell you about is that      8        one -- is that one election.</p> <p>9        <b>Q. That one election is certainly racially</b>      10      <b>polarized, correct?</b></p> <p>11      A. The election?</p> <p>12      <b>Q. There's -- I'm sorry. I don't want to</b>      13      <b>mischaracterize your testimony. I think you said there</b>      14      <b>was -- it would be an example of racially polarized</b>      15      <b>voting. Correct?</b></p> <p>16      A. So the election is compatible with racially      17      polarized voting because I think it's important that      18      when we -- when you characterize voting in an area      19      that's racially polarized, you're -- you're      20      characterizing the behavior of the voters over -- over a      21      set of elections and over a type of election stimulus.      22      And so I think it's -- it isn't a characteristic of the      23      election. It's a characteristic of the voters. So I      24      think that -- we don't know if that is an appropriate      25      characterization of what the voters do in that -- in</p>

<p style="text-align: center;">Page 61</p> <p>1 that election. I mean, just for example, if that's a --      2 you know, if that's a general partisan election between,      3 you know, two Hispanic candidates, one Democrat and one      4 Republican, I don't think that's racially polarized      5 voting.</p> <p><b>Q. Right.</b></p> <p>6 A. But it has -- the election has those features.      7 So, again, it's -- it's not an election that would stand      8 as obviously incompatible with racially polarized      9 voting, but I -- in and of itself that doesn't tell you      10 either that the election is racially polarized or that      11 the voters are behaving in a fashion compatible with      12 racially polarized voting.</p> <p><b>Q. So imagine that election, same thing happens five elections in a row. Is that racially polarized?</b></p> <p>13 A. Again, if -- if you're saying that that happens      14 five times in a row -- and, again, I'd want to know what      15 the -- you know, I want to know the race of the -- or      16 ethnicity of the candidates.</p> <p><b>Q. Fair enough. So let's say Latino candidate A is Latino, Anglo candidate B is Anglo, these are nonpartisan elections, it happens five times in a row. Is that racially polarized voting?</b></p> <p>17 A. Assuming that the -- assuming that the -- that      18 the Hispanic candidate -- that the Hispanic candidate,</p>	<p style="text-align: center;">Page 63</p> <p>1 Texas.      2 <b>Q. No.</b>      3 A. But that's a different topic. And that's not      4 just for Ted Cruz. Right? It's just -- there are lots      5 of -- Texas has lots of Republican Hispanics, and when      6 they run as Republicans they do not get the majority of      7 the Hispanic vote. When they run as Democrats, they get      8 the majority of the Hispanic vote. And when they run      9 against Anglos as -- and when Hispanic Republicans run      10 against Anglo Democrats the Anglo Democrats gets the      11 majority of the vote. So in partisan elections it's not      12 the case, no longer the case -- it may well have been      13 the case in the past -- but it is no longer the case in      14 the sort of current polarized atmosphere that the race      15 of the candidate for either co-ethnics or for -- for      16 nonethnic groups is -- is the determinative factor in      17 voting behavior.</p> <p><b>Q. How about in nonpartisan races, like the SBISD race?</b></p> <p>18 A. I'd say in nonpartisan elections it's -- it's      19 certainly variable depending on the -- you know, the      20 area of the country and -- and some local factors. But      21 there I think you're -- it's more often the case there      22 that you would see Hispanic voters preferring Hispanic      23 candidates.</p>
<p style="text-align: center;">Page 62</p> <p>1 who is also the Hispanic preferred candidate, is being      2 defeated, in most of those elections then I think that's      3 a sort of a -- a nice little set piece for what racially      4 polarized voting looks like.</p> <p><b>Q. Same question, same assumptions, please. For 90 percent support of Latinos for the Latino candidate, and 65 percent support for Anglos, and this outcome is the same?</b></p> <p>5 A. Outcome is the same I think the -- yeah, the      6 result is the same.</p> <p><b>Q. And that would be racially polarized voting, correct?</b></p> <p>7 A. Yes.</p> <p><b>Q. Fair enough. In your time as a litigation expert and a social scientist, do you agree that Hispanic surname candidates are the likely preferred candidate of choice for Latino voters? Likely.</b></p> <p>8 A. Well, I'd want to qualify it a little bit      9 because --</p> <p><b>Q. Sure.</b></p> <p>10 A. -- in my experience in modern U.S. elections      11 that depends entirely on which party that candidate is      12 running under.</p> <p><b>Q. Let's assume --</b></p> <p>13 A. Ted Cruz is not the choice of Latino voters in</p>	<p style="text-align: center;">Page 64</p> <p><b>Q. In Texas and SBISD, correct?</b></p> <p>1 A. I think that's -- I think that's a fair      2 statement. Yeah, I would -- that's what I would expect      3 to see if I was coming in novel into some area. That      4 would -- it wouldn't necessarily be the case, but it's      5 what I would expect to be the case.</p> <p><b>Q. And that's what you did see when you did your OLS report and your EI report, correct?</b></p> <p>6 A. I'm not a hundred percent sure.</p> <p><b>Q. Well, I don't want you to speculate. If you don't recall, you don't recall.</b></p> <p>7 A. Yeah.</p> <p><b>Q. All right. Let's talk about your great report. I'm going to hand you a copy of it. I think I've labeled it as Exhibit No. 2. Could you review this and make sure that it's authentic?</b></p> <p>8 A. This looks like it.</p> <p><b>Q. That's your expert report, correct?</b></p> <p>9 A. Yes.</p> <p><b>Q. Okay. And we've labeled that Exhibit 2. In preparation for your report, other than reviewing the data provided by the plaintiff did you review anything else?</b></p> <p>10 A. So I reviewed the data. I reviewed the -- Dr. Stein's report itself. I looked at several of the</p>

<p style="text-align: center;">Page 65</p> <p>1 articles that he had cited. I looked at a couple of      2 other things that I provided you here that are sort of      3 things that came to my attention as a result of looking      4 through the things in his report, one being this kind of      5 a general statement from a group in California about the      6 use of at-large elections and its effect on Latino      7 representation, and the other being something from the      8 Texas Republican Party about the -- essentially      9 injecting -- deliberately injecting partisanship into      10 nonpartisan elections.</p> <p><b>Q. That's the totality of what you -- all those documents form the basis of your report, correct?</b></p> <p><b>That's the totality?</b></p> <p>14 A. It's everything I recall. We get into      15 specifics and I recall something else I'll -- I will      16 let you know, but that's what I recall.</p> <p><b>Q. I appreciate it. In preparation for this report, did you do any -- did you review any survey data?</b></p> <p>20 A. No, I don't think so.</p> <p><b>Q. Did you perform a survey about voter behavior in SBISD?</b></p> <p>23 A. No.</p> <p><b>Q. Okay. For this report did you do an ecological regression analysis or EI or any kind of a OLS?</b></p>	<p style="text-align: center;">Page 67</p> <p>1 <b>SBISD elections, in formation of this report?</b>      2 A. Other than what's provided by Dr. Stein, no.      3 <b>Q. Okay. I have asked this before, but I want to make sure that I'm clear. In your -- in preparation for your report, did you perform any independent racially polarized voting analysis?</b></p> <p>7 A. No.</p> <p><b>Q. Okay. How long did it take you to review the data?</b></p> <p>10 A. I don't know. I have a -- I have a billing spreadsheet someplace. I could give you -- I could give you a very precise, down to a tenth of an hour, but I don't -- I don't recall offhand.</p> <p><b>Q. Was it 10 hours?</b></p> <p>15 A. I -- I really have -- as you might, as you probably -- it's that time of year. I'm working on a dozen cases simultaneously so I don't --</p> <p><b>Q. Me too.</b></p> <p>19 A. Yeah. I -- at some point those -- you know, I'll hit, you know, some at the bottom of a spreadsheet, and I'll know how much time I spent. I saw a report -- I just looked at a -- some disclosure from another expert in Kansas. It was a guy I know at University of Michigan. And he was hired and provided a report for him two weeks later, along with a bill for \$63,000. I</p>
<p style="text-align: center;">Page 66</p> <p>1 A. No.</p> <p><b>Q. Okay. For this report did you analyze election returns in SBISD elections?</b></p> <p>4 A. No.</p> <p><b>Q. For this report did you review campaign finance data?</b></p> <p>7 A. No.</p> <p><b>Q. Did you for this report -- did you analyze incumbency advantage for this report?</b></p> <p>10 A. No.</p> <p><b>Q. For this report did you analyze any of the issues that form the basis of the campaigns themselves? By which I mean policy issues.</b></p> <p>14 A. No.</p> <p><b>Q. Did you analyze any partisan data for this report?</b></p> <p>17 A. No.</p> <p><b>Q. Okay. Did you look at ballot drift and how that would have affected outcomes?</b></p> <p>20 A. No.</p> <p><b>Q. Did you look at ballot formation and how that would have affected outcomes?</b></p> <p>23 A. No.</p> <p><b>Q. Did you look at any kinds of early vote patterns or precinct data associated with elections, for</b></p>	<p style="text-align: center;">Page 68</p> <p>1 thought I'm doing something wrong because I know he's -- I know he's working for at least a dozen people because I see his name all the time. And, my God, I -- you know, whenever I hit "add" it never adds up to anything like that in a two-week period. That's pretty -- that's pretty astonishing. So I can tell you this. I know when I saw that I was shocked, so I know it's less than \$63,000 worth of my time.</p> <p><b>Q. How much of the report did you write?</b></p> <p>10 A. I wrote the entire report.</p> <p><b>Q. Mr. Crawford and none of the lawyers wrote the report for you?</b></p> <p>13 A. That's correct.</p> <p><b>Q. These are your words, these are your findings, correct?</b></p> <p>16 A. My words, my findings.</p> <p><b>Q. And you didn't use a data assistant to review the data?</b></p> <p>18 A. No, I did not.</p> <p><b>Q. And you didn't use Mr. Stevenson? I'm not sure if I'm getting the name correct.</b></p> <p>22 A. Stevenson.</p> <p><b>Q. Okay. It's Dr. Stevenson I suppose?</b></p> <p>24 A. Yes. I did not -- Dr. Stevenson was not involved.</p>

<p style="text-align: center;">Page 69</p> <p>1       <b>Q. This is 100 percent your work product?</b>      2       A. Correct.      3       <b>Q. Yes, sir. What instructions were you given by</b>      4       <b>counsel in preparation of the report?</b>      5       A. You know, we discussed at the time we were      6       negotiating my employment, you know, what -- what I      7       could do for Mr. Crawford in this case, which was to,      8       you know, provide a commentary on Dr. Stein's report and      9       Dr. Stein's analysis. And that was -- that was the      10      extent of the discussion so --      11      <b>Q. And this is an obvious answer, but I need to</b>      12      <b>ask it anyway. You've reviewed Dr. Stein's report,</b>      13      <b>correct?</b>      14      A. Correct.      15      <b>Q. Okay. I've previously labeled this Expert</b>      16      <b>Exhibit No. 3. Could you review this, make sure that's</b>      17      <b>the report you reviewed?</b>      18      A. Yes, that's the report I reviewed.      19      <b>Q. Make sure that's handy in case you need to</b>      20      <b>refer to it.</b>      21      A. Okay.      22      <b>Q. So just generally first before we get into your</b>      23      <b>specific points, do you disagree with any of the data</b>      24      <b>that was used by Professor Stein in his expert opinion,</b>      25      <b>the data itself?</b></p>	<p style="text-align: center;">Page 71</p> <p>1       what he did. So I guess it's not inconsistent with -- I      2       don't think it demonstrates in an appropriate manner      3       that there is legally significant racially polarized      4       voting in SBISD, but it's a finding that certainly is      5       not incompatible with that.      6       <b>Q. And it's not incompatible with the EI that you</b>      7       <b>ran or the OLS that you ran previously, correct?</b>      8       A. I didn't -- nothing in it surprised me. I'll      9       say that.      10      <b>Q. I understand. Do you agree that Bob Stein's</b>      11      <b>expert report and the methods he used demonstrate</b>      12      <b>racially polarized voting just generally?</b>      13      A. I don't know.      14      <b>Q. Okay.</b>      15      A. Again, it's not inconsistent with that, but I      16      don't know that it actually demonstrates that.      17      <b>Q. I'm not talking as a legal matter. I'm talking</b>      18      <b>only as a social scientific matter.</b>      19      A. I just don't know.      20      <b>Q. Okay.</b>      21      A. It's really hard to say. It's a -- it's a very      22      scattered set of data, and it's a very unusual set of      23      data. It's just hard to say what it demonstrates. I'm      24      really not -- it's not clear to me what it demonstrates.      25      <b>Q. But you would agree that the slopes of the line</b></p>
<p style="text-align: center;">Page 70</p> <p>1       A. I don't have any reason to disagree with the      2       election data, the results by election place. I -- I'm      3       uncertain of what to make exactly of the BISG analysis.      4       I'm not sure if I agree with it or don't agree with it.      5       I may completely agree with it, and I may completely      6       disagree, but I can't quite figure out -- there's sort      7       of different forms of it that are being used there.      8       It's not a hundred percent clear to me what the      9       distinction is or how that's being utilized. But I --      10      in terms of the -- how that leads the -- the voting      11      places to be, roughly to be arrayed, to the extent I can      12      see that, it's -- it's not obviously backwards or      13      anything like that. I'm not sure that it's a -- it's a      14      very precise way of measuring the proportion of Hispanic      15      voters at the polls, but it doesn't -- to the extent I      16      can see that pattern in the scatter plots it's not -- I      17      don't think it's -- in its rough direction it's not      18      incorrect. So it's -- in that sense I think it's      19      accurate enough for the kind of analysis he did to      20      reach -- reasonably, reliably reach a kind of narrow      21      conclusion about this kind of mass of elections.      22      <b>Q. I understand. And it's not inconsistent with</b>      23      <b>the OLS that you ran and the EI that you ran, correct?</b>      24      A. It's not inconsistent. It's not inconsistent      25      with my view of what you would likely see if you did</p>	<p style="text-align: center;">Page 72</p> <p>1       <b>are inverted, correct?</b>      2       A. Yes.      3       <b>Q. And that those slopes are generally consistent</b>      4       <b>with racially polarized voting, correct?</b>      5       A. They're in the correct direction.      6       <b>Q. Okay. What is a p-value?</b>      7       A. A p-value typically is a -- it gives you a      8       probability. So it's, you know, a probability that some      9       value is, and in comparison to some null hypothesis,      10      that it's, you know, within some appropriate range of      11      that -- of that value. So, I mean, that's -- depending      12      on what statistic you're talking about it's a -- you      13      know, it's a probability.      14      <b>Q. Would a layperson call that statistical</b>      15      <b>significance?</b>      16      A. They might. So p-value underlies what we call      17      statistical significance, which requires a null      18      hypothesis. It also underlies what you call a      19      confidence interval. Sometimes people are more familiar      20      with that.      21      <b>Q. Sure.</b>      22      A. That doesn't require a null hypothesis. That      23      just talks about, you know, plus or minus around a --      24      <b>Q. Yeah.</b>      25      A. -- a predicted value.</p>

<p style="text-align: right;">Page 73</p> <p>1       <b>Q. Would you agree that Dr. Stein's report shows 2       statistical significance, that his findings are 3       statistically significant?</b></p> <p>4       A. He reports -- he reports a number that by 5       social science standards would typically indicate 6       statistical significance.</p> <p>7       <b>Q. A perfect answer. I appreciate that.</b></p> <p>8       A. Okay.</p> <p>9       <b>Q. Okay. Do you agree with Professor Stein that 10      his findings show that voting is racially polarized in 11      SBISD elections? Do you agree?</b></p> <p>12       A. No.</p> <p>13       <b>Q. Okay. Why don't you agree?</b></p> <p>14       A. I just don't think it's -- well, for several 15       reasons. One is going back to the -- to the statistical 16       significance. OLS is not a technique, nor is 17       correlation that can generate an appropriate measure of 18       statistical significance for ecological analysis.</p> <p>19       <b>Q. Okay.</b></p> <p>20       A. So that's a well-known -- that's going all the 21       way back to its very origins. Bernie Grofman has 22       written some articles about this. There just isn't an 23       appropriate method for deducing that from OLS with -- 24       with ecological data as opposed to with actual 25       individual level data. So we just have to be -- we can</p>	<p style="text-align: right;">Page 75</p> <p>1       another candidate. And then we're sort of over a span 2       of time and over a series of candidates we're -- we're 3       sort of putting all that together into one -- one giant 4       OLS analysis. And -- and we're not actually looking at 5       the cohesion for the preferred candidate or the voting 6       against the preferred candidate by the majority. The 7       candidate it's already been defined as the candidate 8       with a Hispanic surname. And that's just -- that's just 9       not the right way to do this.</p> <p>10       <b>Q. Okay.</b></p> <p>11       A. I mean, it's important to have -- I think it's 12       important to include information about the ethnicity of 13       the candidates, particularly to have a mix -- it's 14       useful to have a mix of races that are ethnically 15       contested and races that aren't. But the -- ultimately 16       the issues is the -- is voting for the candidate 17       preferred by minorities, not for the assumption that 18       that's the candidate who is, in fact, an ethnic 19       minority, or in this case who has a minority surname but 20       may in fact not be of that ethnicity at all.</p> <p>21       And so, again, I think that's -- it's not 22       to say that with all of that that this isn't compatible 23       with an analysis that would show -- show that done in 24       what I think is a more appropriate way, but in and of 25       itself it's also compatible with a lot of other things.</p>
<p style="text-align: right;">Page 74</p> <p>1       report -- it's not that OLS doesn't produce that 2       estimate. It's just that that estimate is not an actual 3       estimate given the nature of the data. And so it's -- 4       you can't rely on it in the sense that if it's, you 5       know, something significant to the 0.05 level, with -- 6       where that 0.05 estimate comes out of OLS it does not 7       mean that you would expect that result -- you know, that 8       you're in that 95 percent confidence interval or 9       whatever. That's just not true. There are lots of 10       studies that are looked at that said, you know, you can 11       do this kind of analysis, and it shows that, you know, 12       like 95 percent of the results are in fact nowhere near 13       the confidence interval. It just doesn't -- it 14       doesn't -- it's not mathematically correct, and it in 15       practice doesn't work. So we -- that part we don't -- 16       we don't know about, so we can't tell whether -- 17       whatever the pattern is here we can't tell whether it's 18       actually statistically significant or not.</p> <p>19       We're also mixing data from a lot of 20       different elections, and within those elections a lot of 21       different conditions. So at least the best I can 22       understand it in some of these elections there is only 23       one candidate and -- and we're mixing sort of a vote for 24       the candidate with rolloff, or something, as a vote for 25       the noncandidate. It's not the same thing as voting for</p>	<p style="text-align: right;">Page 76</p> <p>1       So I just don't know what to -- it's not the way this is 2       usually done and I -- that doesn't -- you know, the way 3       things are usually done doesn't always mean it's the 4       right way or the best way or even a better way to do 5       things. But in this circumstance I think it attempts to 6       ask too much in a single analysis when a more discrete 7       analysis would solve almost all those problems and be a 8       clearer result.</p> <p>9       <b>Q. So if he did an ecological inference for each 10      of the races that would be preferential, that would be 11      what you preferred, and --</b></p> <p>12       A. Yes.</p> <p>13       <b>Q. -- that would solve the problems you --</b></p> <p>14       A. All those problems would be solved. If you 15       just do that for all the elections, you'll have 16       elections you'll be able to decide who the preferred 17       candidate is rather than assuming it. You'll then be 18       able to look and see was the preferred candidate almost 19       or always the minority candidate. That's a useful piece 20       of information in itself. You'll have reasonable 21       measures of statistical significance that are actually 22       valid. You know, all sorts of good.</p> <p>23       <b>Q. So if he did that we might be square, correct?</b></p> <p>24       A. Of course I got to look at it.</p> <p>25       <b>Q. Yeah.</b></p>

<p style="text-align: right;">Page 77</p> <p>1        A. But, yes, that's -- I mean, that's really my --      2        my primary criticism here of this is that -- that while      3        this method is compat -- could be compatible with it, it      4        could also be showing us something else, and that done      5        differently we would -- we would be able to deal with      6        the -- we'd be able to have a shared understanding of      7        the facts on the ground. And as it is I don't think      8        that that's really -- it's not clear enough yet in this      9        analysis.</p> <p>10        <b>Q. I understand. And you also have two specifics 11        indict, if I recall correctly. One is that you believe 12        he only surveyed specific races, correct?</b></p> <p>13        A. My understanding is that he said that he -- he      14        identified the preferred candidate as the minority, the      15        candidate with the Hispanic surname.</p> <p>16        <b>Q. Let me just go to the part of your report where 17        you reference that, if you don't mind. I'm going to 18        take a moment. I think you said -- I think this is 19        on --</b></p> <p>20        A. Page 3.</p> <p>21        <b>Q. Yeah. "Dr. Stein's analysis proceeds by 22        selecting only contests with at least one candidate with 23        a Hispanic surname." That's what you wrote, correct?</b></p> <p>24        A. Yeah, that was my understanding.</p> <p>25        <b>Q. If he didn't do that, that wouldn't apply,</b></p>	<p style="text-align: right;">Page 79</p> <p>1        looked like fairly substantial correlation, you have to      2        get above 0.7 before you're even explaining half the      3        variance. And so if you're familiar with it and you use      4        it a lot, you know, you're capable of kind of making      5        that mental adjustment. But otherwise it tends to      6        suggest there's more here than there is.</p> <p>7        In this case the -- I think the correlation      8        is something like 0.33, which suggests that it's      9        accounting for about a third of the variation, when just      10        the -- you know, sort of the optical statistic, you can      11        look at this scatter plot, and it's clear that a third      12        of the variation has not been captured here. And, in      13        fact, that's where -- again, for ordinary least squares      14        the -- actually, the correlation is not really what      15        typically is reported for an ordinary least squares      16        regression. What's typically reported is the R-squared,      17        which is the coefficient that tells you what proportion      18        of the variation in the dependent variable explained by      19        variation in the independent variable. And that's      20        important here because that's really what we're -- we're      21        trying to understand -- you got a variation in the      22        proportion of voters at the precinct that are Anglo or a      23        proportion of voters at the precinct that are Hispanic,      24        and you want to know how much that variation is driving      25        the election results. And in this case it's driving</p>
<p style="text-align: right;">Page 78</p> <p>1        <b>correct?</b></p> <p>2        A. Correct.</p> <p>3        <b>Q. All right. Fair enough. And then we go -- you 4        go into I think a really interesting description of R 5        and R-square. That's the other specific indict you have 6        about Stein's report, correct?</b></p> <p>7        A. Yes.</p> <p>8        <b>Q. Could you explain the R score and what that 9        means to the court, please?</b></p> <p>10        A. So R is a measure typically -- it's a      11        correlation measure. It's often called Pearson's      12        correlation, even though it wasn't actually developed by      13        Pearson but by Pearson's mentor. And it's a -- it's a      14        measure that varies between zero and one, with zero      15        being the absence of relationship between two variables      16        presumably at least semicontinuous, and at one a perfect      17        correspondence between the two measures. Unfortunately      18        in the area in between it's not a linear measure. It's      19        a curvilinear measure. And so it's really easy to be      20        deceived by that measure. So an R of 0.5 sounds like      21        you're halfway between zero and one, but in fact you're      22        not. An R of 0.5 corresponds to the independent      23        variable accounting for 25 percent of the variation in      24        the dependent variable. So through the early part of      25        that scale you're really, even when you get up to what</p>	<p style="text-align: right;">Page 80</p> <p>1        less than 12 percent of the election result, and 88      2        percent of this bouncing around is produced by something      3        else.</p> <p>4        <b>Q. That's the claim in the report, and I think I 5        understand that.</b></p> <p>6        <b>What level of R-square, if any, should lead 7        to a conclusion that any model is satisfactory? Is 8        there a specific level of R-square?</b></p> <p>9        A. No.</p> <p>10        <b>Q. Okay.</b></p> <p>11        A. Well, I guess -- I mean, an R-square of zero --      12        it depends on what you're -- what you want the model to      13        do.</p> <p>14        <b>Q. A correlation. You want to prove a correlation 15        and --</b></p> <p>16        A. Oh, a correlation. There are all kinds of      17        scales of correlation that -- you know, some people say,      18        like in the social sciences, a -- you know, a      19        correlation of 0.2 is a pretty good correlation because      20        a lot of things we do have low correlation. You know,      21        that's true for a variety of reasons, not the least of      22        which is extremely poor measurement in the social      23        sciences but -- so in and of itself there's not --      24        correlation is not -- it's not providing you a metric by      25        which you can judge the degree to which your independent</p>

20 (Pages 77 to 80)

<p style="text-align: center;">Page 81</p> <p>1 variable is -- is impacting the dependent variable. And      2 so it's -- it is very seldom used in the OLS context      3 because -- because OLS produces instead the summary      4 statistic, the R-squared.</p> <p><b>Q. I think I understand. What are some of the factors that might explain the variance in R-square on this model?</b></p> <p>8 A. So I think one of the things that probably      9 explains the low R-squared is that you've thrown      10 together -- your data points are not really discrete      11 data points from an event. They're a set of data points      12 from a whole bunch of events. They're at different      13 points in time. So normally if we're looking -- again,      14 if we're looking at a single election, then we could      15 say, you know, whatever the proportion of explained      16 variance is that's how much this variable is explaining      17 about what happened in this election. When you compound      18 this by throwing a bunch of elections together, you've      19 got -- some of this trends over time, and some of this,      20 the very different nature of these elections. Some of      21 these elections are competitive. Some of them are not      22 at all competitive. In a noncompetitive election you're      23 not -- this is not going to explain much in a      24 noncompetitive election because everybody is going to be      25 voting the same way. In a competitive election, it may</p>	<p style="text-align: center;">Page 83</p> <p>1 A. It doesn't -- it solves part of the problem.      2 Again, it unbundles the characteristics of the election,      3 so you don't -- in trying to analyze what happened in      4 2020 you're not stuck with the variance that came from,      5 you know, 2015 when somebody ran unopposed and somebody      6 was an incumbent, whatever. You still have the issues      7 that are germane to that election. But in exactly the      8 form you're suggesting you can look at those and say,      9 you know, it's more predictive in this election than      10 this election, why might that be, and you can talk about      11 the characteristics of that election. It's really hard      12 to do that when the election itself is -- it's almost      13 hard to find where the particular elections are in here      14 because they're kind of all over the place.</p> <p><b>Q. I understand. That's reasonable. So how about this? Is having a high R-square always good?</b></p> <p>17 A. I don't know. I guess I'm tempted to think      18 that in social sciences you -- it's like a higher --      19 it's like you can't be too rich or too thin. Right?      20 Can you have -- can you have too high in R-squared? I      21 don't think it's -- certainly there are equations with      22 high R-squareds that are less useful than ones with low      23 R-squareds because it depends on what it is you're      24 measuring. Right? There's an old joke about if you      25 measure the same thing twice, right, you'll get a high</p>
<p style="text-align: center;">Page 82</p> <p>1 actually be more useful. By separating out the      2 elections you separate out the context. Right? You can      3 say, look, it's really explanatory here. Over here in      4 this election where there was like just a write-in      5 candidate it doesn't explain much, but we wouldn't      6 expect it to explain much. So part of the -- part of      7 the issue here is just there's an artificial increase in      8 the amount of variance that needs to be explained, and      9 that's not a necessary -- that's a choice of putting it      10 all in -- in one picture instead of pulling it out      11 separately.</p> <p><b>Q. I think I understand. But as we're sitting here today you can't explain the variance, what causes the variance here in this R-square, correct? It could be incumbency? It could be issues in the campaign like you said? It could be ballot drift? It could be any of those things, correct?</b></p> <p>18 A. It's -- it can be a host of factors. All you      19 can say is that whatever those factors are they're more      20 influential, substantially more influential than is the      21 question of what's the racial composition of the      22 precinct.</p> <p><b>Q. And to be clear, if he did an EI analysis election by election that solves his problem for you, correct?</b></p>	<p style="text-align: center;">Page 84</p> <p>1 R-squared, except in the social sciences where even if      2 you measure the same thing twice you don't get a high      3 R-squared because measure and error, et cetera, et      4 cetera, et cetera. So it's a -- it's an indicator of      5 the completeness of the model. Among other things      6 it's -- it's cautionary I think. A low R-squared is      7 cautionary in the sense that, you know, you need to --      8 you need to pay some attention. It can be humbling in      9 the sense of what you're explaining. It can be      10 challenging in the sense that you know that there's      11 other things to take into account.</p> <p>12 It can also reveal that your model is      13 underspecified, so it -- and specification is not just      14 an issue of -- one of the things you can't do is just      15 ignore the fact that the model has a low R-squared, in      16 the sense that your certainty about what's in -- about      17 the parameters in the model is partly a function of what      18 you left out of the model. And if the model is      19 improperly specified, which is often the case with low      20 R-squared models, then a properly specified model may      21 produce a different result. So you point out      22 incumbency. It's possible that if you bring incumbency      23 in as a variable that this correlation will diminish.      24 It's control variables because of specification error.      25 Bringing in the right specification can diminish,</p>

<p style="text-align: center;">Page 85</p> <p>1 sometimes can reverse correlation. So it's -- it is --      2 it's not always better to have a higher R-squared. But      3 certainly a low R-squared signals -- should make you      4 cautious about overinterpreting the one parameter you've      5 estimated because you really -- you don't have a full      6 model that let's you estimate that parameter.</p> <p><b>Q. Is R-squared a biased estimator in the term, whatever that means, the -- the statistics?</b></p> <p>7 A. Well, it's -- to the extent that you have met      10 the basic requirements for OLS then the R-squared, like      11 the estimates of the parameters, are linear, unbiased      12 estimators. They're -- and to the extent you violate      13 assumptions the -- the nice thing about OLS, one of the      14 many, many nice things about OLS, is that even when you      15 violate assumptions it tends to have more impact on      16 efficiency than it does on bias. So the estimator is      17 often linear -- OLS estimates, even when you violate a      18 condition that causes them not to be the most efficient      19 estimator, they're often surprisingly robust with regard      20 to bias. So, you know, in the -- in the context of      21 social science estimation the -- you know, R-squared      22 is -- is a relatively reliable indication of how good a      23 job you're doing of accounting for variation.</p> <p><b>Q. Could a high R-Square score be a symptom of overfitting your best fit line?</b></p>	<p style="text-align: center;">Page 87</p> <p>1 A. There's -- I mean, there is only one      2 independent variable so --</p> <p><b>Q. Right.</b></p> <p>4 A. But the adjusted R-squared just accounts for      5 the fact that you've got, you know, multiple independent      6 variables. And it produces a result as you get close to      7 reaching a level where your number of variables is close      8 to the number of cases. But the R-squared, adjusted      9 R-squared are not going to be very different here.</p> <p><b>Q. On page 5 of your report, sir, you say -- if you want to turn to that page, I just want to make sure I'm quoting you correctly -- "Taken together, the issues identified above suggest that the evidence relating to Gingles 2 and Gingles 3 provided in Dr. Stein's report are not sufficient to meet the plaintiff's burden of proof on these two threshold conditions, or the broader totality of the circumstances." Is that what you wrote, sir?</b></p> <p>19 A. Yes.</p> <p><b>Q. Okay. And I'm not trying to get horsey with you. I think I -- you know I have enormous respect for you, but I want to be clear about a couple of things. You're not an attorney, correct?</b></p> <p>24 A. Correct.</p> <p><b>Q. And you've never done a survey of burdens of</b></p>
<p style="text-align: center;">Page 86</p> <p>1 A. Absolutely.</p> <p><b>Q. Yeah.</b></p> <p>3 A. It's -- you know, as the number of independent      4 variables approaches the number of data points you will,      5 you know, by definition have one less parameter than you      6 have data points. You will perfectly fit your -- fit      7 your line. So in and of itself it's not -- you can --      8 you can produce the high R-squared trivially. On the      9 other hand, I'm not sure that you can produce a low      10 R-squared trivially. I think that really does tell      11 you that -- again, it's not -- in and of itself it      12 doesn't -- it doesn't say you haven't learned anything.      13 It is a -- it is an appropriate caution I think in this      14 kind of modeling, and I think a -- and I think a very      15 valid one because I think one of the things it tells you      16 is this is not the right way to do this analysis. Or I      17 wouldn't say "not the right." Not the best -- not the      18 best way, not the most informative way to do this      19 analysis.</p> <p><b>Q. I understand. When you analyzed Professor Stein's report, I just want to be clear for the record, you used normal R-squared, not R-squared adjusted, correct?</b></p> <p>24 A. Correct.</p> <p><b>Q. Okay.</b></p>	<p style="text-align: center;">Page 88</p> <p>1 <b>proof or sufficiency of evidence, correct?</b></p> <p>2 A. Correct.</p> <p>3 <b>Q. And while you have extensive background in testifying you have no background in what sufficient evidence is for a judge, correct?</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. Okay. In the final part of your report you cite I think this -- this report from Abott and Magazinnik; is that correct?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Okay. I'm going to hand it to you. I've labeled this Exhibit 5. We're out of order. I apologize. But I just did it incorrectly. Could you review this and make sure this is the right article?</b></p> <p>16 A. I think this is right.</p> <p>17 <b>Q. And so in the final part of your report you caution us based on this article that the use of single-member districts may actually be worse for Latinos in some communities, correct?</b></p> <p>21 A. Correct.</p> <p>22 <b>Q. And that's based largely on the data for these California elections that are analyzed by Abott and Magazinnik, correct?</b></p> <p>25 A. It's -- as they cite, they're unlike the</p>

22 (Pages 85 to 88)

<p style="text-align: center;">Page 89</p> <p>1 literature on single-member districts and black      2 representation. There's long been controversy about      3 whether that same relationship was present for Latino      4 voters sometimes in earlier studies, sometimes in      5 different locals. So they're really addressing what's      6 kind of been a mixed set of findings in the past, I      7 guess a much more -- a much less certain area of the      8 literature than would be the case for the value of      9 single-member districts in providing for increased black      10 representation.</p> <p>11       <b>Q. Okay. That's in relation to the Latinos you</b>      12       <b>mean, correct?</b></p> <p>13       A. Correct.</p> <p>14       <b>Q. All right. And I think in your report you</b>      15       <b>posit that in highly segregated areas with low vote</b>      16       <b>participation by Latinos single-member districts may not</b>      17       <b>lead to more representation. That's what you posit,</b>      18       <b>correct?</b></p> <p>19       A. I'm not -- I'm not positing that.</p> <p>20       <b>Q. Okay. You're just recording that?</b></p> <p>21       A. So -- yeah. And particularly -- so this is --      22 I don't cite these -- I've never cited this paper in a      23 report before. I'm citing it only because when      24 Dr. Stein laid out kind of his three areas of evidence      25 he suggested that this was part of what he was advancing</p>	<p style="text-align: center;">Page 91</p> <p>1       <b>to it. It's on the -- it looks like the second full</b>      2       <b>paragraph. It's the second sentence. It starts with --</b>      3       A. Yes.</p> <p>4       <b>Q. -- "Spanish Surname Registered Voters (SSRV)</b>      5       <b>make up less than 20 percent of the registered voters in</b>      6       <b>Spring Branch ISD, and in the most recent school board</b>      7       <b>elections that included the Position 4 Elizondo -</b>      8       <b>Earnest contest, Spanish Surname Registered Voters made</b>      9       <b>up less than six percent of the actual election day</b>      10       <b>Spring Branch voters." Correct?</b></p> <p>11       A. Correct.</p> <p>12       <b>Q. And then you draw similarity, is it fair to</b>      13       <b>say, between the article's use of voter eligible</b>      14       <b>population and SSR -- SSVR, correct?</b></p> <p>15       A. Correct.</p> <p>16       <b>Q. But isn't it true that -- how about this? How</b>      17       <b>does Abbott and Magazinnik define voter eligible</b>      18       <b>population in their article?</b></p> <p>19       A. I believe they're using -- I don't know if      20 they're using VAP or CVAP. I don't recall.</p> <p>21       <b>Q. All right. Let's take a look at the article so</b>      22       <b>we're not -- I think it's on -- it's on Figure 4. I</b>      23       <b>think this is page -- let's see. Here's the exhibit.</b>      24       <b>One second. Let me find it for you. I apologize. I</b>      25       <b>should have put the page number here, and I thought that</b></p>
<p style="text-align: center;">Page 90</p> <p>1 in the report, and it's his citation to their work that      2 I'm referencing. So what I'm just providing is sort of      3 some context for his discussion of their -- of their      4 report. I think it -- their -- what their conclusion      5 that I quote indicates is that they see there's reason      6 in some areas to be cautious because the effect is not      7 going to be -- in their view is not going to be      8 uniformly positive. It may just be -- it may be      9 neutral. It may be negative. And, again, I think that      10 just provides some context for what Dr. Stein is saying      11 here. It's not something I'm saying. It's just, I      12 think, is a little bit of a corrective to what he's      13 saying they're saying.</p> <p>14       <b>Q. Okay. So you're not going to testify about it?</b>      15       <b>This is not something you're saying you will testify</b>      16       <b>about?</b></p> <p>17       A. I mean, if I'm asked about it, I would testify      18 about it.</p> <p>19       <b>Q. All right.</b></p> <p>20       A. I don't get to control that.</p> <p>21       <b>Q. I'm going to need to delve into it just a</b>      22       <b>little bit, then, if you don't mind.</b></p> <p>23       A. Yeah. Absolutely.</p> <p>24       <b>Q. In this -- on the report on page 7, you say the</b>      25       <b>following: "Spanish Surname Registered" -- I guess turn</b></p>	<p style="text-align: center;">Page 92</p> <p>1       <b>I had.</b></p> <p>2           MR. ABRAMS: Figure 4 is on page 22.</p> <p>3           MR. GOLANDO: Twenty-two. Okay.</p> <p>4       <b>Q. (BY MR. GOLANDO) On page 22, sir, here, I</b>      5       <b>believe the discussion -- so I think it's on page 21.</b></p> <p>6           MR. ABRAMS: The text begins on page 21 at      7 the bottom.</p> <p>8           MR. GOLANDO: Yeah.</p> <p>9       <b>Q. (BY MR. GOLANDO) So here it is. How are they</b>      10       <b>defining -- what is your understanding of how they are</b>      11       <b>defining voter eligible population?</b></p> <p>12       A. So they -- it looks like they're defining it as      13 CVAP or H -- I guess Latino CVAP or Hispanic CVAP.</p> <p>14       <b>Q. So HCVAP and VEP are the same thing here,</b>      15       <b>correct?</b></p> <p>16       A. Yes.</p> <p>17       <b>Q. And would you agree with me that SSVR and HCVAP</b>      18       <b>are different measures?</b></p> <p>19       A. Yes.</p> <p>20       <b>Q. And SSVR is a lower measure often done, or has</b>      21       <b>to be --</b></p> <p>22       A. Well, one hopes.</p> <p>23       <b>Q. One would hope so.</b></p> <p>24       A. Not always in Texas or Louisiana. But, yes, it      25 should be a subset of CVAP.</p>

<p style="text-align: right;">Page 93</p> <p>1       <b>Q. And in SBISD it is absolutely a subset of</b>    2       <b>HCVAP, correct?</b>    3       A. It is lower than CVAP, yes.    4       <b>Q. And so HCVAP is likely to be far higher in</b>    5       <b>SBISD than SSVR, correct?</b>    6       A. It is higher.    7       <b>Q. I think I got the adjective. It's higher?</b>    8       A. Yeah, it's higher. It's -- it's significantly    9       higher. So it's not just marginally higher. It's    10     significantly higher.    11     <b>Q. Okay.</b>    12     A. Yes.    13     <b>Q. And so in the article itself on page 22 --</b>    14     let's pull it up for you again -- there are a couple of    15     different graphs. If you'll look at Figure 5, I    16     believe, it says -- in the article it says "there is a    17     dramatically" -- "dramatic and precisely estimated    18     positive effect in large districts that are composed of    19     at least 30 percent Latinos." That's Figure 5. What    20     does that mean exactly?    21     A. That means that there's -- there's an upward    22     slope when they constrain or confine the population for    23     the figure to that set of districts.    24     <b>Q. How does the -- what is the definition of a</b>    25     <b>large district in this article?</b></p>	<p style="text-align: right;">Page 95</p> <p>1       <b>Q. How many have been appointed?</b>    2       A. I don't know.    3       <b>Q. And would you be surprised it was zero?</b>    4       A. No.    5       <b>Q. Okay. The fact that the voter eligible</b>    6       <b>population is north of 20 percent and that SBISD is a</b>    7       <b>large school district, does that change your opinion of</b>    8       <b>whether or not single-member districts might be a better</b>    9       <b>fit given this article?</b>    10     A. I guess I'm -- I'm going on what they say,    11     which is "increasingly racially polarized voting coupled    12     with small numbers of Latino voters relative to other    13     groups--may create new barriers." And so they're    14     actually talking about the small number of voters, so I    15     guess -- I don't know how eligible is translating into    16     voters in California, but eligible is not translating    17     into voters here. And so in the sense that their    18     concern is about what happens when you have a small    19     number of Hispanic voters in an increasingly polarized,    20     politicized environment as a result of issues related to    21     change in the nature of elections, they offer a caution    22     about that that I think is -- continue to believe is    23     precisely correct for SBISD.    24     <b>Q. But right now you would agree with me that</b>    25     <b>there's zero chance that a Latino preferred candidate</b></p>
<p style="text-align: right;">Page 94</p> <p>1       A. You mean a district with a large Latino    2       population?    3       <b>Q. I think they actually do it by enrollment, if</b>    4       <b>I'm not mistaken. Maybe here is the -- so small</b>    5       <b>districts -- so how does the article define a small</b>    6       <b>district?</b>    7       A. Enrollment of less than 13,700.    8       <b>Q. And how does it define a large district?</b>    9       A. Larger than 13,700.    10     <b>Q. And how many students does SBISD enroll?</b>    11     A. I have no clue.    12     <b>Q. Is it higher than 13,000?</b>    13     A. I would think so.    14     <b>Q. It's probably a large --</b>    15     A. It's a big district. Yeah.    16     <b>Q. Fair enough. How many Latinos have been</b>    17     <b>elected to the school board in SBISD's history?</b>    18     A. I don't know.    19     <b>Q. Would you be surprised to hear there was zero?</b>    20     A. I wouldn't be surprised, no.    21     <b>Q. And how many African Americans have been</b>    22     <b>elected in SBISD's history?</b>    23     A. I don't know.    24     <b>Q. Would you be surprised if it was zero?</b>    25     A. No.</p>	<p style="text-align: right;">Page 96</p> <p>1       <b>can be elected today, correct?</b>    2       A. I didn't know you thought that, and I don't    3       agree with it.    4       <b>Q. Okay. Let's just go historically.</b>    5       <b>Historically the minority preferred candidate has not</b>    6       <b>been elected, correct?</b>    7       A. I don't know that that's correct. I don't    8       believe it's correct.    9       <b>Q. Fair enough. You said before that you believe</b>    10     <b>that the Latino candidate is usually the Latino surname</b>    11     <b>candidate, correct?</b>    12     A. I said I thought it's probably the case that    13     when -- yes. So if there's a Latino -- a candidate that    14     is Latino I think they probably would usually be the    15     preferred candidate of Latinos, yes.    16     <b>Q. And it's -- you were not surprised to learn</b>    17     <b>that no Latino has ever been elected to the school</b>    18     <b>board --</b>    19     A. Yes.    20     <b>Q. -- in SBISD, correct?</b>    21     A. (Moving head up and down.)    22     <b>Q. So the Latino preferred candidate in SBISD</b>    23     <b>elections has never been elected in SBISD, correct?</b>    24     MR. CRAWFORD: Objection, form.    25     A. No. That's -- most of the elections to SBISD</p>

<p style="text-align: center;">Page 97</p> <p>1 board have not included Latino candidates, and so in -- 2 I assume in many of those elections the -- 3     <b>Q. (BY MR. GOLANDO) Fair enough.</b> 4         A. -- Latino preferred candidate was elected. So 5 a Latino that was the preferred Latino candidate, if -- 6 and I'm just accepting your assertion that no Latino has 7 ever been elected. If it's true that no Latino has ever 8 been elected, then the Latino candidates that were also 9 the preferred candidate of Latino voters, which is a 10 subset, has not been elected. 11     <b>Q. And that's -- that's a much better way to say</b> 12 <b>that.</b> 13         A. Okay. 14     <b>Q. And you agree with that, correct?</b> 15         A. I agree with that. 16     <b>Q. All right. So the chance -- okay. Fair</b> 17 <b>enough. I think I understand.</b> 18     <b>Did you review Professor Stein's proposed</b> 19 <b>single-member district plan in his report?</b> 20         A. I looked at it. One of the things that I was 21 clear about in the sort of scope of what I was going to 22 do and the amount of time I had to do it was that I was 23 going to stay out of being a demographer. 24     <b>Q. I understand.</b> 25         A. So I did not do any -- I looked at it. I</p>	<p style="text-align: center;">Page 99</p> <p>1     <b>Q. All right. So you have a vast history of</b> 2 <b>drawing maps, correct?</b> 3         A. I've drawn a lot. I wouldn't say vast. 4     <b>Q. Okay.</b> 5         A. But I've drawn a lot of school district maps, 6 yes. 7     <b>Q. Fair enough. Does anything about that, the way</b> 8 <b>it's shaped geometrically, give you pause?</b> 9         A. No. 10    <b>Q. Would you agree that it's a compact district?</b> 11         A. Yes. 12    <b>Q. Okay. Would you agree that if the numbers are</b> 13 <b>correct that it's CVAP majority?</b> 14         A. Yes. 15    <b>Q. Would you agree that that map meets Gingles 1?</b> 16         MR. CRAWFORD: Objection, exceeds the scope 17 of his engagement and his opinion. 18    <b>Q. (BY MR. GOLANDO) But as an expert in map</b> 19 <b>drawing I'm asking and as -- and one who's drawn several</b> 20 <b>Gingles 1 maps does it meet the form of Gingles 1?</b> 21         A. Again, I -- so I haven't looked at any of this, 22 so I'm going entirely on your assertion that the numbers 23 that were provided match the numbers that -- the 24 picture. Right? And I have no idea whether that -- you 25 know, whether that picture actually produces the numbers</p>
<p style="text-align: center;">Page 98</p> <p>1 recognized what it was. It's a -- a modified version of 2 the -- he says basically the polling places. It isn't. 3     <b>Q. No.</b> 4         A. It's a -- I mean, that obviously -- you know, a 5 quick look at the population deviation will tell you 6 that -- you know, nobody gets the population perfect in 7 an attendance district because there it's about 8 students, not about people. So -- but it obviously is 9 based on -- the cores of the districts are the 10 recognizable cores of the -- of the current polling 11 places are, which would be the attendance districts, 12 with some modifications to -- you know, to get the 13 population equal. So that's what I saw there. It looks 14 like the area that he says is the district that's CVAP 15 majority is an area where I would suspect there's a -- 16 it could be you could draw a CVAP majority district 17 so -- 18     <b>Q. Does anything about that district give you</b> 19 <b>pause as a map drawer? Because you've done that in the</b> 20 <b>past, correct?</b> 21         MR. GOLANDO: Actually, strike that. Let 22 me just do it correctly. 23     <b>Q. (BY MR. GOLANDO) Historically you've drawn</b> 24 <b>maps for jurisdictions, right?</b> 25         A. Yes.</p>	<p style="text-align: center;">Page 100</p> <p>1         or not but -- 2     <b>Q. Sure.</b> 3         A. -- if that picture produces those numbers, and 4 that's the most current CVAP estimate, then I'd say 5 that's what you'd be looking for in a -- you know, in a 6 district to establish Gingles 1. 7     <b>Q. So yes?</b> 8         MR. CRAWFORD: Same objection. 9         A. Yes. 10    <b>Q. (BY MR. GOLANDO) Thank you, sir. All right.</b> 11 <b>Only about nine more pages.</b> 12    <b>Is the Latino community in SBISD</b> 13 <b>sufficiently large and geographically compact to</b> 14 <b>constitute a majority in a single-member district?</b> 15         A. I don't know. 16    <b>Q. In your experience? You've drawn maps.</b> 17         A. I don't know. 18    <b>Q. And you've reviewed election analyses, and you</b> 19 <b>know SBISD well. You've worked here for 20 years.</b> 20    <b>In your opinion, given your broad history</b> 21 <b>of working with SBISD, do you think it's sufficiently</b> 22 <b>large and geographically compact?</b> 23         MR. CRAWFORD: Object to the extent it -- 24         A. I mean, I don't have -- 25         MR. CRAWFORD: -- exceeds the scope of his</p>

<p style="text-align: center;">Page 101</p> <p>1       opinion.</p> <p>2       A. I don't have an expert opinion about that.</p> <p>3       <b>Q. (BY MR. GOLANDO) How about just a lay opinion, then?</b></p> <p>4       A. A lay opinion? It wouldn't surprise me. I guess that's one of our -- that's one of our answers. I wouldn't be surprised if that was true, but I haven't -- I have not at any time trying to draw -- tried to draw a district. So, you know, I don't have any -- I don't have any information to add to this beyond what is in Dr. Stein's report, but it wouldn't surprise me.</p> <p>5       <b>Q. Based on your years of experience in data reviewed for SBISD are Latinos generally politically cohesive in SBISD elections?</b></p> <p>6       A. Again, it's -- you know --</p> <p>7       <b>Q. It's a range?</b></p> <p>8       A. It just depends. It's a range. And they're certainly not in the -- not cohesive at the levels that we would traditionally see for black voters.</p> <p>9       <b>Q. And that would be 90 percent and above, correct?</b></p> <p>10      A. Yes.</p> <p>11      <b>Q. Okay.</b></p> <p>12      A. And I'm not sure even -- if it would even be cohesive at the level you would normally see in a</p>	<p style="text-align: center;">Page 103</p> <p>1       <b>collected and your experience in SBISD. Do you recall whether or not Latino voters in SBISD elections support different candidates than Anglo voters generally?</b></p> <p>2       A. I guess I'm not clear on -- I mean, you're asking me about the results of the analysis that I provided the attorneys, so I'm not sure -- is this like -- are we back in the realm of what's acceptable here or --</p> <p>3       <b>Q. I'm asking you just based on your experience. It's a question about do you believe them to be so based on the entirety of your experience here?</b></p> <p>4       MR. CRAWFORD: And based on Dr. Alford's interpretation of the question I think it would call for protected communications, and so I'll instruct you not to answer.</p> <p>5       <b>Q. (BY MR. GOLANDO) You can answer if you want.</b></p> <p>6       A. I've been instructed not to answer --</p> <p>7       <b>Q. Fair enough.</b></p> <p>8       A. -- by my employer.</p> <p>9       <b>Q. I think we've asked that question before. In your opinion based on your years of experience at SBISD, does the Anglo majority vote sufficiently as a bloc to enable it to defeat the minority preferred candidate?</b></p> <p>10      A. I would say sometimes.</p>
<p style="text-align: center;">Page 102</p> <p>1       general election. So there's some -- again, there's modest to moderate cohesion.</p> <p>2       <b>Q. Based on your years of experience as an election analyst and demography expert, in the data reviewed for SBISD historically, not just for this case, but historically are Anglos politically cohesive in SBISD elections generally?</b></p> <p>3       A. Moderately I'd say. I mean, it's -- it varies from election to election. But, yeah, it's a -- probably -- probably somewhere in that same range, but I don't really know.</p> <p>4       <b>Q. Based on your years of experience and the data reviewed for SBISD do Latino voters in SBISD elections support different candidates than Anglo voters in SBISD?</b></p> <p>5       A. I have not -- I don't know. Comprehensively I don't know.</p> <p>6       <b>Q. You did an EI report, correct?</b></p> <p>7       A. The what?</p> <p>8       <b>Q. You did an EI before the litigation began?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. Okay. And you recall the contents of that EI report, correct?</b></p> <p>11      A. I do.</p> <p>12      <b>Q. And I'm asking you to call into that based -- based on your expertise and your -- the data you've</b></p>	<p style="text-align: center;">Page 104</p> <p>1       <b>Q. How often?</b></p> <p>2       A. I don't know.</p> <p>3       <b>Q. More often than not?</b></p> <p>4       A. I don't know.</p> <p>5       <b>Q. Does Texas have a history of official discrimination in the jurisdiction in SBISD that affected the right to vote? Does Texas have it?</b></p> <p>6       A. Now we're -- we're not just outside of my expertise on this case. We're just --</p> <p>7       <b>Q. Yeah. I'm just trying to limit your testimony. I just want to make sure you're not going to be testifying in totality. So if you don't have an opinion that's great. You can just say "no."</b></p> <p>8       A. Yeah, I don't have an opinion.</p> <p>9       <b>Q. Okay. Does Harris County?</b></p> <p>10      A. I don't have an opinion. I don't have an expert opinion.</p> <p>11      <b>Q. Does SBISD?</b></p> <p>12      A. I have no idea.</p> <p>13      <b>Q. Does SBISD use the place system for voting?</b></p> <p>14      A. It's my understanding they do.</p> <p>15      <b>Q. Okay. Have minority candidates been denied access to the jurisdiction's candidate slating process formally or informally to your knowledge?</b></p> <p>16      A. I don't know anything about the slating</p>

<p style="text-align: center;">Page 105</p> <p>1 process, if there is one.</p> <p>2     <b>Q. Are SBISD minorities discriminated against in</b></p> <p>3     <b>socioeconomic areas such as education, employment, or</b></p> <p>4     <b>health?</b></p> <p>5     A. I don't know.</p> <p>6     <b>Q. Have there been overt or subtle racial appeals</b></p> <p>7     <b>in campaigns in SBISD elections?</b></p> <p>8     A. I don't know.</p> <p>9     <b>Q. Okay. Has a minority ever won an election in</b></p> <p>10    <b>SBISD to your knowledge?</b></p> <p>11    A. I don't know.</p> <p>12    <b>Q. Okay. Are elected officials -- are the SBISD</b></p> <p>13    <b>trustees responsive to the concerns of minority voters</b></p> <p>14    <b>in SBISD? Do you have an opinion?</b></p> <p>15    A. My opinion, yes, I think they are.</p> <p>16    <b>Q. What is that based on?</b></p> <p>17    A. Just on -- you know, the degree -- sort of my</p> <p>18    sort of nonexpert kind of information you get from</p> <p>19    reading the paper sort of thing, that certainly</p> <p>20    there's -- you know, the district floats bonds and</p> <p>21    builds facilities in a variety of areas. Like most</p> <p>22    districts they run a -- you know, the bilingual</p> <p>23    education program. They have programs that are designed</p> <p>24    to, you know, help students, early start kinds of</p> <p>25    things, whatever. So that's just -- my sense is the</p>	<p style="text-align: center;">Page 107</p> <p>1 at the individual level, but you're not getting the data</p> <p>2 at the individual level. You're getting it at some</p> <p>3 level of aggregation. So, for example, I could do a</p> <p>4 study of counties in the United States based on the --</p> <p>5 what proportion of the county is male and female, and</p> <p>6 then look at Republican, Democratic voting, and try to</p> <p>7 draw a conclusion about the effect of gender on</p> <p>8 Republican or Democratic voting. And that's the</p> <p>9 ecological fallacy, right, that -- that once aggregated</p> <p>10 that the variation across those aggregations is</p> <p>11 disclosing simply the same variation that's taking place</p> <p>12 across individuals. It's not necessarily the case that</p> <p>13 that's happening.</p> <p>14     <b>Q. Okay. So as I learned it -- this is very --</b></p> <p>15     <b>this is like Science 101, right -- it's when you infer</b></p> <p>16     <b>individual behavior from aggregated measurements. Is</b></p> <p>17     <b>that fair?</b></p> <p>18     A. Yes.</p> <p>19     <b>Q. Okay. So ecological regression describes a</b></p> <p>20     <b>voting behavior between certain relationships, right?</b></p> <p>21     A. Correct.</p> <p>22     <b>Q. Okay. But you can't infer the intent of the</b></p> <p>23     <b>voter, correct?</b></p> <p>24     A. It doesn't measure the intent of the voter.</p> <p>25     People infer the intent all the time.</p>
<p style="text-align: center;">Page 106</p> <p>1 district has a reputation as a district that has, you</p> <p>2 know, made a variety of efforts, provided resources and</p> <p>3 expertise directed toward -- toward minority students.</p> <p>4     <b>Q. Will you be testifying about that?</b></p> <p>5     A. I don't think so. It's not an area in my</p> <p>6 report. It's not my area -- I mean, that's -- again,</p> <p>7 that's a -- you can have a sense about that, and then</p> <p>8 there's empirical information about it. I don't have</p> <p>9 the empirical information and it's not an area that I do</p> <p>10 work in so I don't testify about it.</p> <p>11     <b>Q. Fair enough. We're entering the last stages,</b></p> <p>12     <b>the -- my category of this is fun stuff, so I hope this</b></p> <p>13     <b>is enjoyable for you. It will be for me.</b></p> <p>14     <b>My first question to you actually is what</b></p> <p>15     <b>is the ecological fallacy?</b></p> <p>16     A. So the ecological -- normally you gather data</p> <p>17 at the level that you want to ask or answer a question.</p> <p>18 So if I want to know what effect people's gender has on</p> <p>19 how they vote I would -- because that's a question in</p> <p>20 which the unit of analysis of the question is an</p> <p>21 individual person then the unit of analysis for my study</p> <p>22 should be people. So I would ask people about their</p> <p>23 gender, and I would ask them about how they vote. And</p> <p>24 that would be a normal analysis. An ecological analysis</p> <p>25 is one where your -- your question -- you want an answer</p>	<p style="text-align: center;">Page 108</p> <p>1     <b>Q. For sure. Right.</b></p> <p>2     A. But, no, you don't have -- you're not measuring</p> <p>3 the voter's intent, although it's true in any research</p> <p>4 scheme you have a variety of tools that help -- can help</p> <p>5 you to eliminate certain possibilities or to make</p> <p>6 certain things more likely than not. So I'm going to</p> <p>7 give you an example in a partisan general election. If</p> <p>8 you find that -- as I talked about earlier, if you find</p> <p>9 that when the Republican candidate is a Hispanic,</p> <p>10 Hispanics vote against that candidate when -- when the</p> <p>11 candidate is Anglo. So what you see there then is a</p> <p>12 pattern, that the changes in the partisanship of the</p> <p>13 candidate drives voting, but the changes in the</p> <p>14 ethnicity candidate doesn't drive the voting. That's</p> <p>15 sufficient -- not that you would know that from any one</p> <p>16 analysis, but that's sufficient to suggest that given</p> <p>17 that you've added this other condition that the behavior</p> <p>18 of the voters, whatever their intention, their behavior</p> <p>19 is not being driven by the signal that they're getting,</p> <p>20 right, because you've separated two signals, signal</p> <p>21 about the candidate and party, and signal about the</p> <p>22 candidate and ethnicity. And where you can separate</p> <p>23 those you can see whether it's a mix of those or whether</p> <p>24 it's mostly one or mostly the other or neither.</p> <p>25     <b>Q. So you infer the intent of the voter by</b></p>

<p style="text-align: right;">Page 109</p> <p>1     <b>subtraction almost, correct?</b></p> <p>2       A. You still don't infer the intent. I'm very 3       uncomfortable with intent analysis in all of its forms. 4       I don't believe people have intent quite frankly. It 5       requires that people have a unified personality, that 6       people have -- that people's brain is -- that part of 7       the brain that actually makes decisions is entirely in 8       control, and therefore the -- I mean, I think just the 9       idea that -- I mean, there's a lot more than just 10      unintended consequences. There are just completely 11      unintended actions as well. So even talking about 12      intent at the individual level where you have the most 13      chance of it making sense I'm not comfortable with it. 14      We certainly don't have tools for teasing that out. And 15      then, of course, when you get to collective bodies my 16      favorite is the intent of the legislature. Anybody who 17      has ever been near a legislature knows the idea, as you 18      well know, that the legislature itself generates an 19      intent, it's like forget about the -- I mean, the 20      individual legislators could barely figure out what 21      their intent is on a good day. Collectively Lord only 22      knows what's going on but --</p> <p>23     <b>Q. Yeah. I think voters are pretty irrational, I</b> 24     <b>think legislators are definitely irrational, in policy</b> 25     <b>meetings pretty irrational, right? I understand.</b></p>	<p style="text-align: right;">Page 111</p> <p>1       as if you don't bring in partisanship you can't tell the 2       difference in the -- you know, in a general analysis. 3       So if you -- I mean, you can look at -- you can vary 4       things like, you know, the location of voters within the 5       district. You can vary things about, you know, the 6       voters' opinions and so forth. So there are a lot of 7       other things you can look at that -- you know, that 8       would allow you to at least get some sense of how 9       powerful or durable or influential any particular 10      characteristic is.</p> <p>11     <b>Q. Okay.</b></p> <p>12       A. But I still think it's -- it's not really -- 13       it's not really about intent. It's about -- it's about 14       the behavior rather than the internal process.</p> <p>15     <b>Q. Do you believe that there is a link between</b> 16     <b>biology and political ideology?</b></p> <p>17       A. Yes.</p> <p>18     <b>Q. Could you tell me what that -- what you believe</b> 19     <b>that is?</b></p> <p>20       A. So for many aspects -- so I -- first of all, 21       ideology is not an abstract way of organizing your 22       thinking about the world. This is some of the oldest 23       work in American politics. You ask people ideology in 24       the "ism" sense, liberalism, conservatism, communism, 25       you know, libertarianism, whatever, they don't have a</p>
<p style="text-align: right;">Page 110</p> <p>1       A. And collectively whatever we're guilty of as 2       individuals put -- put us in groups of two, in groups of 3       four, in groups of eight, in groups of twelve, and then 4       talk about the outcome of that irrationality when it 5       gets aggregated. And I think it's really -- it's not 6       just difficult. I just don't think it's -- that there's 7       a value to it. So I don't think it's valuable to talk 8       about the intent of the -- to the intent of the voters. 9       I think it's valuable to talk about -- certainly it's 10      valuable to talk about what the cue is the voters are 11      responding to. And this is a context where that's 12      really important. If the -- if voters are responding to 13      a cue of ethnicity, then that tells you something about 14      the behavior. And if they're not, it tells you 15      something about their behavior and --</p> <p>16     <b>Q. And we would know that they were responding to</b> 17     <b>a cue about their ethnicity in this case if we ran an EI</b> 18     <b>and there was cohesion for Latino voters and cohesion</b> 19     <b>for Anglo voter candidates, correct?</b></p> <p>20       A. No.</p> <p>21     <b>Q. How would we know, I guess is more or less --</b></p> <p>22       A. Okay. So that -- we can certainly 23       distinguish -- again, you need an analysis that brings 24       in some other factors so that you can tell whether 25       that's the factor that's explaining it or the cue. Just</p>	<p style="text-align: right;">Page 112</p> <p>1       clue. They don't know what the basic principles are. 2       They never apply them. They have no clue. So at the 3       same time, as John Jost has pointed out, the behavior of 4       voters is remarkably -- if you know, you know, as he 5       says in "The End of Ideology," if you think ideology 6       disappeared from American political life you must not be 7       seeing the same American political like I'm seeing 8       because this ideology runs rampant. So what is it? And 9       clearly it's -- you know, we don't have to scratch the 10      surface to know it's not principle. Right?</p> <p>11       So if it was principle conservatism then -- 12       like Greg Abbott believes local governments should make 13       their own decisions, not central governments. Right? 14       Well, yeah, that's true. Just tell me what the subject 15       matter is of the local government, and I'll tell you 16       whether he favors it or not. So that's not the same 17       thing as saying that he's not ideological. Right? He's 18       very ideological because the kind of things he wants to 19       stop Harris County from doing are a very specific kind 20       of thing. Right? It's not hard to predict what 21       Governor Abbott is going to get on about these days. 22       It's going to be a series of things that are very 23       closely related. And as it happens those things are 24       closely related to things that vary in the way human 25       brains are built. So --</p>

<p style="text-align: right;">Page 113</p> <p>1       <b>Q. How do you --</b>      2       A. -- the more --      3       <b>Q. I'm sorry. I didn't mean to cut you off.</b>      4       <b>Please go ahead.</b>      5       A. So, I mean, the more easily disgusted someone      6       is in general the more conservative they'll be in      7       general on a very specific set of conservative issues,      8       those issues related basically to sexual behavior. So I      9       can do a really good job if I just know how easily      10      you're disgusted. And I can measure that by skin      11      conductance, by -- just by showing you a picture of      12      somebody eating worms. I can measure your skin      13      conductance, and I can do a good job of predicting your      14      opinion on gay marriage or abortion or premarital sex,      15      things that are related to basically just sexual purity      16      or sanctity. I can't do a very good job of saying      17      whether you're a fiscal conservative or whether you're a      18      hawk, but I can for that particular area.      19       <b>Q. Are there any other areas that are close to</b>      20      <b>sexual areas?</b>      21       A. Well, I mean, if I'm -- if instead of giving      22      you a disgusting image I give you a threatening image,      23      or I unexpectedly play a loud burst of white noise in      24      your earphones, I can do a very good job of predicting      25      your position on securing the border, gun control, more</p>	<p style="text-align: right;">Page 115</p> <p>1       person who is more easily startled or has a more active      2       threat system or threat recognition system places you in      3       a more threatening world. And someone who has, you      4       know, very little of that kind of -- and I think both      5       liberals and conservatives recognize this. Right?      6       Liberals recognize that conservatives see a      7       more dangerous world. And, of course, because different      8       ideologies like to be pejorative with each other      9       liberals say conservatives are just paranoid, and      10      everywhere they look they see a threat. Right? And      11      then you ask conservatives like, "Well, what about      12      liberals?" And they say, "Oh, yeah, that's great. Put      13      liberals in charge of the Defense Department. They      14      don't see threats anywhere." Right? "Liberals wear      15      rose-colored glasses. They look out in the world and      16      say, 'Maybe if we were just nice to them they'd be nice      17      to us.'" And conservatives say, "No. You could be nice      18      to them, and they'll kill you." Right? So one side is      19      seeing a scarier world than the other side. We know      20      that if we manipulate how scary the world is, like if      21      you make conservatives feel safer, you put them in a      22      safer environment, you create a safer system, they      23      become more liberal in their views. They actually      24      become more liberal across a fairly wide range of views.      25      If you threaten liberals, they become more</p>
<p style="text-align: right;">Page 114</p> <p>1       funding for the military, whether you would like to have      2       a bomb shelter in your backyard in the '60s. So we have      3       a mechanism in our brain that responds to threat.      4       It's -- among other things it's a -- part of that is a      5       startle mechanism. So we startle when we hear loud      6       noises. People who are conservative on national defense      7       startle significantly more easily than do liberals on      8       national defense, even if the -- what they're startling      9       to is just a burst of white noise, absolutely content      10      free. That startled reaction varies across individuals.      11      And there's a really nice study that looked at startle      12      reflex in infants, so how easily startled is an infant      13      because that gets recorded as part of Apgar. Like,      14      you're supposed to startle.      15       <b>Q. Sure.</b>      16       A. So they recorded that, and then followed that      17      up like 40 years later with how easily startled they      18      were as adults. And it's a -- there's about a 90      19      percent predictive relationship. So our startle      20      ability, the degree to which our amygdala and the      21      networks that serve the amygdala moving both to      22      impulsive reactions, like a jerking motion, and to      23      things like sensing, feeling, experience, and fear,      24      those things are -- those differences are differences      25      we're born with. And so being born into -- being born a</p>	<p style="text-align: right;">Page 116</p> <p>1       conservative. So you have both a resting state      2       difference, and then you have this reaction difference.      3       Right? If I ask you whether homosexual relations are      4       inappropriate or immoral or -- well, that would work 20      5       years ago. It doesn't really work anymore except with      6       people over the age of 70. It won't work with students      7       anymore. There's no variation in that at all. But if I      8       ask you whether incest was appropriate on a scale of one      9       to five, from one being absolutely never, you know, to      10      five being sure, what the heck, if I ask you that in a      11      nice, clean setting you'll answer that measurably      12      differently than if you do that in a setting where      13      there's something that might prompt disgust, a presence      14      of rotting food or -- one study that's a remarkable      15      study, they -- the only thing they varied in the entire      16      study was when they would direct the students who came      17      in in the central entryway, and then the hallway split.      18      And one side of the hallway was a hand sanitizer      19      dispenser. On the other side there wasn't. So the      20      experiment is just to flip which light of the hall the      21      table is on when they fill out the survey. So they      22      either told the students to go to the right, or they      23      told the students to go over to the table by the hand      24      sanitizer. That changes people's opinion. It      25      measurably changes their opinion on gay marriage, on</p>

<p style="text-align: center;">Page 117</p> <p>1 homosexuality in general, on abortion, on a whole series 2 of things related to sexual purity.</p> <p><b>Q. That is fascinating.</b></p> <p>4 A. Just a prompt of purity. It's something as 5 simple as that that prompts purity. And if you think 6 about traditional notions of ideology it's very hard to 7 understand why purity is a part of that at all. 8 Honestly, what in the -- in the thoughtful scheme, 9 Marxism or John Locke or whoever, what does sexual 10 behavior got to do with it? How did it get to be so 11 central to the political debate between liberals and 12 conservatives not just here but in every country in the 13 world and every period of history? Why is it so 14 central? Why is it so central to religion, between 15 liberal and conservative religions? Why is it important 16 to the orthodoxy and not important to the reformed?</p> <p>17 So my answer to that is the reason that 18 it's central and the reason it's ever present is that 19 human beings differ from each other. And they differ in 20 two ways. They differ in the sense that their life 21 experience is completely unique. And so you are who you 22 are because of what you lived. But you also were 23 completely unique the day you were born. And that 24 uniqueness the day you were born is not just your genes. 25 It's a whole set of structures inside your brain that</p>	<p style="text-align: center;">Page 119</p> <p>1 out there like 1.12 percent, so you're going to -- as 2 the family spreads out, you see -- you see more 3 difference. And then more broadly across the population 4 we're for the most part unrelated. We share 5 approximately zero segregating genes within the average 6 person in the population so --</p> <p><b>Q. That's interesting. And the course of that</b> <b>study -- I think that you cited this study -- it's</b> <b>called "Political Attitudes Vary with Detection of</b> <b>Androstenone"?</b></p> <p>11 A. Androstenone. Yeah.</p> <p><b>Q. Am I saying that correctly? This is your work,</b> <b>correct?</b></p> <p>14 A. It's a team.</p> <p><b>Q. Yeah, of course. I've labeled this Expert --</b> <b>Expert Exhibit No. 4. Could you review it and</b> <b>authenticate it for me, please?</b></p> <p>18 A. It looks like the study.</p> <p><b>Q. So this is a report you published with three</b> <b>other folks it looks like; is that correct?</b></p> <p>21 A. Yes.</p> <p><b>Q. And could you describe what this report is to</b> <b>the court, please?</b></p> <p>24 A. So this is a study that -- there's a -- people 25 have a biological difference in their ability to detect</p>
<p style="text-align: center;">Page 118</p> <p>1 are going to make you a different person than, for 2 example, your twin. I have twins, and they are as 3 different as night and day. And the same is not true 4 for identical twins.</p> <p><b>Q. That's true.</b></p> <p>6 A. Identicals are not different as night and day. 7 The likelihood that they'll share the same adult 8 ideology is twice as high if they're identical twins as 9 if they're not identical twins. And parents don't 10 raise -- parents don't tell -- when they have identical 11 twins, they don't say, you know, "Republicans are great, 12 and let's support Donald Trump." But if they're 13 nonidentical twins they take one of them aside and say, 14 "Trump is a great guy." They take the other one aside 15 and say, "Joe Biden is a terrific guy." Right? They 16 lived in the same environment, they were born at the 17 same time, and yet they are markedly different on 18 fundamental issues like political ideology. And that to 19 me tells me there's a biological basis to it. 20 And that biological basis, like all the 21 rest of our biology, is just distributed randomly as a 22 result of sexual reproduction. Right? I'm more likely 23 to have the same -- politics runs in families because, 24 after all, George W. Bush has 50 percent of George H.W. 25 Bush's genetic material. Preston, on the other hand, is</p>	<p style="text-align: center;">Page 120</p> <p>1 and in their classification of the pleasantness or 2 unpleasantness of androstenone. And this is a study 3 that looks at whether that difference is related to 4 anything that might be related to politics, in 5 particular to sort of what broadly might be called a 6 preference for hierarchy.</p> <p><b>Q. And what were the findings? Do you recall?</b></p> <p>8 A. The findings, that there is a modest 9 relationship between the ability to and the valence on 10 the detection of androstenone and a preference for 11 hierarchy.</p> <p><b>Q. So what is androstenone? I'm not sure I</b> <b>understand what it is.</b></p> <p>14 A. It's a -- it's a -- it's a chemical that's 15 present in humans. It's a -- part of a breakdown 16 product of testosterone. So it's slightly more elevated 17 in males than females, but it's present in all humans. 18 It makes its way as a discrete molecule out of the body 19 through sweat. And when you give people a whiff of it 20 people either -- a substantial portion of the public 21 can't smell anything, so they don't detect any odor at 22 all. And then another set of the public describes the 23 odor as being similar to vanilla or ginger, something 24 like that, a kind of a pleasant spicy odor. And then 25 another portion of the public describes the odor as sort</p>

<p style="text-align: center;">Page 121</p> <p>1 of offensive. Urine is one of the things people often 2 say it smells like. So for some people it's a very 3 unpleasant odor, for some people it's a pleasant, 4 pleasing odor, and then for some people it's no odor at 5 all.</p> <p><b>Q. That's interesting.</b></p> <p>6 A. There are actually -- although we have the 7 ability to separate about 400,000 chemicals through our 8 olfactory sense, which is in itself a remarkable -- it's 9 the only part of our brain that's exposed to air. The 10 olfactory bulb is literally a part of the physical brain 11 that protrudes out into the sinuses in order to have the 12 immediate ability to detect these chemical keys. And 13 the keys are very specific. There is a -- there is a 14 receptor for every single chemical that you can detect. 15 The ones where the receptor is -- where we have 16 receptors that at one time were active but are no 17 longer -- because of mutation are no longer functional, 18 we can't smell, so we actually over time have lost a lot 19 of active receptor capability. And uniquely among 20 things related to brain physiology each one of those 21 receptors has to be built by a separate gene.</p> <p>22 So as a class we have more genes for 23 olfaction receptors than we have for any other 24 physiological character, precisely because it takes a</p>	<p style="text-align: center;">Page 123</p> <p>1 <b>Q. So it looks like on page 14 -- if you will turn to that, please. I want to discuss some of the findings, if you don't mind. On the bottom part it discusses the results for the political batteries or some of the batteries in Table 1; is that correct?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. And it looks like there was some findings. So it looks like "Preferences for literalism were positively correlated with androstenone intensity, albeit at a relaxed level of significance." Is that correct?</b></p> <p>4 A. Correct.</p> <p>5 <b>Q. What's the R score for that?</b></p> <p>6 A. 0.16.</p> <p>7 <b>Q. Okay. Now, you stand by that finding, correct?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Okay. What is the R-square score for that finding?</b></p> <p>10 A. That would be whatever 0.16 is squared so it --</p> <p>11 <b>Q. I have that as 0.0256. Correct?</b></p> <p>12 A. That would be correct. Yes.</p> <p>13 <b>Q. Is that lower or higher than Bob Stein's R-square?</b></p> <p>14 A. Lower.</p> <p>15 <b>Q. Okay. Again on -- you wrote a little bit below</b></p>
<p style="text-align: center;">Page 122</p> <p>1 separate gene to build the protein that can detect the 2 chemical key for each one of them. And what that means 3 is across that you very often have situations where 4 people are more or less able to smell certain things. 5 So some -- for almost everything there's at least some 6 subset of people who can't detect the odor because of a 7 mutation in the -- in the genes or an improperly formed 8 receptor. But it's rare to have -- and often that's 9 accompanied by people who describe it as intensely 10 something or not so intensely something. But it's rare 11 to have a complete valence, for something to be detected 12 by some people that's very positive and other people 13 it's very negative.</p> <p><b>Q. That's fascinating.</b></p> <p>14 A. Cilantro is the --</p> <p><b>Q. Right.</b></p> <p>15 A. -- the only taste equivalent in taste, is that 16 cilantro either tastes lovely or like soap. And 17 people -- a lot of people don't like soap in their food. 18 I don't like soap in my food, so I don't like cilantro. 19 But other people find it wonderful. So it's in that 20 same rare category.</p> <p><b>Q. Yeah. I love it, so I guess we're just different.</b></p> <p>21 A. There but for the grace of God, go I.</p>	<p style="text-align: center;">Page 124</p> <p>1 <b>that that "disgust sensitivity and androstenone intensity" -- let's see here -- so there's a -- I'm going to get you the whole thing. "The same trended for disgust sensitivity and androstenone intensity." Is that correct?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. And you stand by that finding, correct?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. What is the R score for that finding?</b></p> <p>6 A. That one is 0.16.</p> <p>7 <b>Q. And what is the R-square of that finding?</b></p> <p>8 A. I assume it would be pretty similar to the 9 previous one.</p> <p>10 <b>Q. Correct. Yes, sir.</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And I think I have that as 0.0256. Correct?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And is that lower or higher than Bob Stein's R-square?</b></p> <p>15 A. Lower.</p> <p>16 <b>Q. Okay. I think there is another finding here. "Threat sensitivity." Right below that it says "Threat sensitivity was also positively correlated with androstenone intensity." Is that correct?</b></p> <p>17 A. Yes.</p>

<p style="text-align: right;">Page 125</p> <p>1       <b>Q. And you stand by that finding, correct?</b>      2       A. Yes.      3       <b>Q. And what is the R score of that finding?</b>      4       A. That is 0.17.      5       <b>Q. And what is the R-square score of that?</b>      6       A. Slightly, however slightly, minusculely higher      7       than the previous two.      8       <b>Q. I have that as 0.0289. Does that seem correct?</b>      9       A. That seems correct.      10      <b>Q. Is that lower or higher than Bob Stein's</b>      11      <b>R-square?</b>      12      A. Lower.      13      <b>Q. Okay. Further down you wrote that</b>      14      <b>"androstenedione intensity was positively correlated with</b>      15      <b>the Preferences for Social Order battery."</b> Is that      16      correct?      17      A. Correct.      18      <b>Q. And what was the R score for that finding?</b>      19      A. That is 0.19.      20      <b>Q. Pretty good?</b>      21      A. We're starting to get up there now. We're      22      getting pretty close to -- we're getting to the threes,      23      aren't we?      24      <b>Q. Yes, sir.</b>      25      A. I'm getting excited.</p>	<p style="text-align: right;">Page 127</p> <p>1       A. Yeah. 0.21.      2       <b>Q. Okay. And what is the R-square for that</b>      3       <b>finding?</b>      4       A. Must have made it to 0.04 by now.      5       <b>Q. Yes, we did. It's 0.0441. Is that correct?</b>      6       <b>That seem about right to you?</b>      7       A. That seems a little higher than I would think,      8       but okay. I'll take it.      9       <b>Q. Well, let's just do it real quick. Let me see,</b>      10      <b>get a calculator. I may have done it incorrectly. I'm</b>      11      <b>not a social scientist. I just square the number,</b>      12      <b>correct?</b>      13      A. Yeah, you just square the number.      14      <b>Q. Okay.</b>      15      A. I'm not a calculator, so we're in the same boat      16      when it comes to this one. This is not really about      17      being a social scientist. I don't know. It just      18      seems -- oh, golly. We are getting somewhere. I'm      19      impressed.      20      <b>Q. Just to be clear with the record, the R-square</b>      21      <b>for that finding is 0.0441, correct?</b>      22      A. That's correct.      23      <b>Q. And is that lower or higher than Bob Stein's</b>      24      <b>R-square?</b>      25      A. Lower.</p>
<p style="text-align: right;">Page 126</p> <p>1       <b>Q. So what is the R-square of that?</b>      2       A. It's something in the -- between three and --      3       0.03 and 0.04.      4       <b>Q. I have it as 0.0361. Does that sound about</b>      5       <b>correct?</b>      6       A. It sounds fair.      7       <b>Q. All right. And you stand by that finding,</b>      8       <b>correct?</b>      9       A. Yes.      10      <b>Q. And is that lower or higher than Bob</b>      11      <b>Stein's R-square?</b>      12      A. Lower.      13      <b>Q. Further down you say "we do find that</b>      14      <b>androstenedione intensity continues to exhibit a</b>      15      <b>significant positive relationship with preferences</b>      16      <b>for social order."</b> Is that correct?      17      A. Correct.      18      <b>Q. And do you stand by that finding, sir?</b>      19      A. Yes.      20      <b>Q. Okay. And what was the R score for that</b>      21      <b>number? I have it as -- it should be on page 16 in the</b>      22      <b>full -- first full graph, the last sentence, or the next</b>      23      <b>to last sentence. "Though we do find that androstenedione</b>      24      <b>intensity continues to exhibit a significant positive</b>      25      <b>relationship" --</b></p>	<p style="text-align: right;">Page 128</p> <p>1       <b>Q. Okay. That's all I have, I think, on that.</b>      2       <b>Would you believe that biological</b>      3       <b>ideological preferences, are they more outcome</b>      4       <b>determinative in a nonpartisan election I wonder?</b>      5       A. It's -- I haven't really thought about that      6       much. It's -- partisanship itself is -- the direction      7       of partisanship itself is not very biological.      8       <b>Q. Okay.</b>      9       A. So there's very little heritability. Party ID      10      comes from exactly where you expect it to come from. It      11      comes from your parents. It comes from your life      12      experience. To the extent that it shows heritability      13      it's largely through the heritability of ideology. So,      14      for example, if your parents are liberal Democrats but,      15      you know, you turn out to be sort of biologically a tilt      16      conservative, then while you will start out, probably      17      start out identifying as a Democrat, you may by the time      18      you're 30 have drifted over and be an independent or      19      possibly even a moderate Republican. So that what's      20      being -- what's operating there is this underlying      21      ideological tendency to make you more or less      22      comfortable with a party.      23      I remember talking to a southern senator at      24      one point, and he said, "This is a bunch of baloney. I      25      know it's a bunch of baloney because I used to be a</p>

<p style="text-align: center;">Page 129</p> <p>1 Democrat, and now I'm a Republican." I said, "So even      2 though" -- he said, "How could it be biology? I have      3 the same" -- "I have the same genes that I had 20 years      4 ago when I was a Democrat, but now I'm a Republican." I      5 said, "Well, I don't know. I guess maybe you just      6 thought about it and decided to change your world of      7 view." He said, "I didn't change. The damn party has      8 changed." I said, "Okay. You're sure making my point      9 for me here, and you're sure making it easy." It's      10 like -- it really is a really good example. Right?      11 He -- you know, he was comfortable enough for a while in      12 the old Democratic Party because it had a very      13 conservative southern wing, but he shifted over.</p> <p>14 So in that sense your -- sort of your      15 predisposition can affect your likelihood of staying in      16 a party you inherit from your parents. It can have an      17 affect when your parents are of different parties. I      18 come from a mixed marriage. My mother was a Democrat.      19 My father was a Republican. My brother is a Republican.      20 I'm a Democrat. So you know how those things work. You      21 got to pick your battles and pick who you're going to      22 side with. But partisanship itself is largely a choice      23 people make or a choice they don't make in the sense      24 that they inherit it, so I -- in the U.S. at least party      25 ideas is an identification. It is closer to your</p>	<p style="text-align: center;">Page 131</p> <p>1 of really frank partisanship. Right? So they just      2 aren't -- you know, the old days when the median      3 Republican and the median Democrat were both sort of      4 good school people, right, the -- the school board      5 elections were nonpartisan because mainstream      6 Republicans and Democrats, although they were      7 ideologically different, believed in quality, free      8 public education, believed in good universities. Right?      9 Those days are over. That just is not the case anymore.</p> <p>10 <b>Q. Indeed.</b></p> <p>11 A. And so that's going to become -- you know, we      12 don't -- go to a school board meeting. My God. I used      13 to tell my students to go to school board meetings and      14 federal court hearings because it would be      15 inspirational. I sure as heck don't tell them that      16 anymore. Federal court still is inspirational. You      17 know, I know. I'm pretty careful telling them which      18 judge. No, I'm not going to share that --</p> <p>19 <b>Q. Okay.</b></p> <p>20 A. -- information at this point. So yeah. I      21 mean, I don't know. I guess it's -- it's a good      22 research question.</p> <p>23 <b>Q. Is it possible?</b></p> <p>24 A. It is -- I think it is possible that -- I mean,      25 quite frankly I think, yeah, it's -- and, again, I don't</p>
<p style="text-align: center;">Page 130</p> <p>1 religious affiliation than it is to most other traits.      2 It is not just a preference for one party over the      3 other. People don't just say "I prefer the Democrats."      4 People say "I am a Democrat."</p> <p>5 <b>Q. Correct.</b></p> <p>6 A. That wouldn't be true in Europe. Most      7 Europeans don't identify themselves as a party. They      8 identify which party they prefer or vote for or where      9 they are in a kind of party spectrum, but they don't      10 typically think of themselves as -- in the way that we      11 think of ourselves as Texans or Catholics or Americans.      12 So it's a -- it's a self-identification, and like most      13 self-identifications there's strong childhood effects,      14 and then strong adult choice effects. So what -- so      15 would underlying -- underlying ideological drive more in      16 a nonpartisan than a partisan? I think it would --      17 obviously it would depend on a lot of things. There's a      18 social science answer for you.</p> <p>19 My guess is it's probably more important --      20 it probably is more important as the salience of      21 ideology goes up in the campaign itself. So I'll make a      22 bold prediction here. Ideology is going to become      23 increasingly important in nonpartisan elections, not      24 just because they're nonpartisan, but because ideology      25 is being injected into those elections, even in the form</p>	<p style="text-align: center;">Page 132</p> <p>1 think it really -- I don't think you can really -- one      2 of the things I think people misunderstand about our      3 work is that people have this idea that if something has      4 some genetic precursor or some physical brain precursor      5 that it must be more important or less -- you know, less      6 variable or something else. And I always try to tell      7 students that, you know, the -- sort of the biology of      8 human politics is like the -- is like the bayou current.      9 You may not even realize bayous are flowing bodies of      10 water. You could live right here a long time and not      11 recognize the bayou actually flows in some direction,      12 you know, unless of course we got a quarter of an inch      13 of rain, in which case they're obviously moving. But      14 it's a very small, very weak force, but it's a constant      15 force. And the day-to-day forces, the things that      16 happen in our lives, the people that we respect, the      17 jobs we take, those are big forces. They're powerful      18 forces. They push us all over the place.</p> <p>19 And you just -- you can -- you can just      20 look at the change in, you know, in the average Democrat      21 or the average Republican's position on a whole host of      22 things over time. Those social forces are powerful      23 forces. The power of your brain's biology is that it      24 works 24 hours a day very quietly in the background and      25 slowly -- whatever position you get pushed to you --</p>

<p style="text-align: center;">Page 133</p> <p>1 like a boat on a very slow -- I can predict the      2 direction. All other things being equal you're going to      3 come back toward that center of gravity that your      4 biology gives you with regard to ideology. And that's      5 about all. Just a weak force that tends to pull you --      6 it tends to pull you in a direction. So it's definitely      7 not the strong force that people normally think of      8 biology as being. When it comes to things like      9 ideology, which are quite abstract, we're much too smart      10 to be led around by that. Right? Because we're unlike      11 other animals. We don't just think. We think about our      12 thinking. That metacognition is a really distinctive      13 trait, and it reduces, right, and it reduces -- that's      14 why we have the ability to defer gratification in ways      15 that are really remarkable.</p> <p><b>Q. Some of us. Not necessarily me.</b></p> <p>17 A. Yeah. Well, you know, I'm not doing such a      18 great job myself. But just speaking as one person to      19 another who can only defer certain kinds of      20 gratification on a successful basis. But the point is,      21 of course, right, that the -- sort of the ability to be      22 aware of that, to be able to think about that really      23 reduces the ability for -- for at least some drive.</p> <p>So the other thing I think is really      25 important is that politics is a -- is a part of what</p>	<p style="text-align: center;">Page 135</p> <p>1 A. So, I mean, if you think about the -- obviously      2 there's a -- there's a thing called race that's a      3 completely social figment -- not a figment -- but it's      4 completely a social creation. It's an intellectual      5 thing. It's an abstract category in which we bundle all      6 kinds of things. But if you want to look at sort of      7 what are the things that are most likely to create that      8 bundle, right, there's a reason why we talk about people      9 of color. Right? There are gradations in the tint of      10 people's skin, and that gradation of the tint of their      11 skin is genetic. We can be tanned or untanned, but the      12 amount of -- you know, all other things being equal, the      13 proportion of external melanin in your skin is      14 hereditary. Right? If both of your parents are black,      15 you're likely to be black. Right?</p> <p>16 So in that sense the markers out of which      17 we've created this -- this kind of sometimes reasonable      18 and mostly unreasonable figment about racial categories,      19 the markers themselves are -- are often genetic. And      20 because they're genetic they both provide an easy hook      21 for saying "you're different than me." Right? "I can      22 see that you're different." And skin color is one of      23 the markers that's commonly used for that. Although      24 there are other more subtle markers that are used in      25 things like the caste system in India, for example.</p>
<p style="text-align: center;">Page 134</p> <p>1 makes us social animals. And that's really not the most      2 fundamental part. Right? The really fundamental parts      3 of us, the things that are survival driven are      4 appetitive and aversive. Right? So our appetitive      5 drives, our drive to sexually reproduce, our drive to      6 get food, to get shelter, those basic drives are really      7 powerful things. And those are things that we have --      8 can struggle with controlling. But, you know, this sort      9 of slight left-right predispositions are pretty modest      10 drives, and therefore our ability to outthink ourselves      11 is really pretty powerful in that realm.</p> <p><b>Q. Fair enough.</b></p> <p>13 A. Not to mention the effect of other people.      14 Like any time I find myself drifting however slightly      15 conservative I have my wife to correct my thinking and      16 to point out that I'm drifting a little bit, a little      17 bit in the wrong -- in the wrong direction, or my      18 brother to point out that I'm just a complete idiot for      19 believing pretty much anything, anything that I believe      20 so --</p> <p><b>Q. Do you believe, or is it your position, that      22 there's a genetic component to race?</b></p> <p>23 A. Yes.</p> <p><b>Q. Could you talk a little bit more about that      25 please?</b></p>	<p style="text-align: center;">Page 136</p> <p><b>Q. Sure.</b></p> <p>2 A. So there's a biological hook there. And then      3 does that biological hook create all this other      4 epiphenomena around it? It doesn't. But it does make      5 that -- it helps make that epiphenomena more powerful      6 out in the world. The fact that it's biological helps      7 account not only its -- for some of its power, but also      8 for some of its invidiousness. Right? Because you      9 can't change the -- you're born a skin color. You're      10 born tall, or you're born short. Right? So physical      11 characteristics that are -- you're born with that are      12 present at birth and are genetic are not things that you      13 can change. And recognizing that you can't change them      14 can be powerful in reducing things like racism, but they      15 also can be things that trap people. Right?</p> <p>If you're in the Dalit category, you're      17 born into it, and you're trapped into it. And if you      18 are -- you know, if your parents are black and you're      19 lighter skinned than they are, you may be able to choose      20 a different racial category for yourself. But for the      21 most part that's not something people can do. So it      22 isn't an act of will, and so things that are imposed on      23 that basis are things that people can't control.      24 Recognizing that I think is really -- can be very -- can      25 be damaging in the sense that it -- when people think of</p>

<p style="text-align: right;">Page 137</p> <p>1 it as biologically different they think, therefore, the      2 solution to that might be genocide. On the other hand,      3 if you think it's not biological, then the solution may      4 be reeducation. Right? So for a genocide -- I always      5 tell my students genocide is wrong not because it's      6 mistaken, although it is, it's wrong because it's      7 genocide. Right? But reeducation -- the Chinese      8 cultural revolution is wrong. It killed millions of      9 people. It destroyed families and societies all on the      10 false belief that you could completely change, you know,      11 a college professor of art into a good farm laborer in      12 their mind by just making them do farm labor. Right?      13 So you can't change everything about people, whether      14 it's what they think or the way they appear.</p> <p>15 And the solution to that can be much more      16 positive. And I think you see that with sexual      17 orientation. Right? So in an era when people believe      18 sexual orientation was a choice then people did not want      19 people to make the wrong choice. Well-meaning parents,      20 probably to protect their kids from making a mistake in      21 that era, possibly even well-meaning lawmakers, tried      22 to -- tried to regulate that. As the proportion of      23 people who think that sexual orientation is something      24 you're born with goes up the proportion of people who      25 care about it goes down.</p>	<p style="text-align: right;">Page 139</p> <p>1 liberals. You know, just roll the dice. You could have      2 been born a liberal." Right? "So if you just accept      3 that they're born that way then you can stop      4 wanting them" -- you can stop thinking that what they're      5 doing is directed at you, and you can stop thinking that      6 you're going to change them" because anybody who's spent      7 any time discussing politics knows you're not going to      8 change very many minds. You're going to make people      9 mad, but you're not going to change -- you can change      10 policy. You can find a way to make a policy work that      11 fits somewhere in between. But if your way to change      12 policy is change the mind; that is, change the      13 fundamental ideological beliefs of your fellow      14 legislator or your next door neighbor, that's a fool's      15 errand. Right? It's just not going to happen.</p> <p>16 So if you just accept it -- I mean, most of      17 my neighbors are conservatives and, you know, I'm not      18 fans of their politics, but I -- you know, I don't have      19 any personal animosity to them. You know, I put up my      20 signs, and they put up theirs, and, you know, we stare      21 at each other, but I don't -- most of them are what they      22 are, and I -- that's just -- one of our graduate      23 students, a very talented black graduate student is      24 very, very conservative and very political. And he      25 said, "It's hard. It is hard. It's" -- "in many ways,"</p>
<p style="text-align: right;">Page 138</p> <p>1 <b>Q. I understand.</b></p> <p>2 A. So young people today believe that you're born      3 into the sexual orientation, and so that expression      4 "born that way," right, what about it? Right? "This      5 is" -- "this is just" -- "this is who I am." And so I      6 think as much as history has come down for the most part      7 on negatively exploiting the characteristics, the      8 physical -- heritable physical characteristics that we      9 then bundle up into this fiction of race it's -- it's      10 also possible understanding that those are just physical      11 characteristics people are born with can -- can diminish      12 that, as it does in the case of sexual orientation. And      13 my hope is that the same thing is true with regard to      14 ideology.</p> <p>15 I tell my students, "I know you don't      16 like" -- I mean, these are Rice students. So there are      17 like two conservatives in the class, and they're not --      18 nobody is happy with them when they pipe up. And so I      19 say, "Look, you're not happy with," you know, whatever      20 it is they're saying here, "but you know what? Don't be      21 so full of yourself. Don't be so proud that you're a      22 liberal. You know, but for the grace of God or but from      23 your genetics you could have been this person. How      24 would you feel about that? And you conservatives,      25 you're like looking down your nose at all these</p>	<p style="text-align: right;">Page 140</p> <p>1 he said, "it's harder now to be a black conservative      2 than it is just to be black," right, that the -- the      3 people just don't like it. They just think he's wrong,      4 and they don't understand why he would -- why he would      5 side with people who don't side -- who have animosity      6 toward him because of the color of his skin.</p> <p>7 Just a really tough -- another student who      8 is very openly gay and very conservative, like      9 Federalist Society, and he said the weird thing about      10 being at Rice is nobody cared that he was gay, but      11 everybody thought the fact that he was in The Federalist      12 Society was like -- like people looked at him with open      13 disgust when they found out he was in The Federalist      14 Society. He said the funniest thing was that the other      15 people in The Federalist Society because they were just      16 young Rice people, right, they just said, "You're gay.      17 I mean, obviously. You know, you're a smart person, and      18 you are a moral person, so you wouldn't choose to be      19 gay." Or it wasn't that they weren't, you know, openly      20 prejudice against that idea. But they said, "You know,      21 you're a good example." Right? "People don't choose to      22 be gay because God knows you wouldn't choose to be. So      23 that's just the way you are." And they were pretty      24 accepting of him. But the people in the Gay and Lesbian      25 Student Association never accepted the fact that he was</p>

<p style="text-align: center;">Page 141</p> <p>1 a conservative. At the end of the day that kept coming 2 up. This was actually during that era of the W. 3 campaign --</p> <p>4 <b>Q. Sure.</b></p> <p>5 A. -- when it was being openly exploited to drive 6 voter turnout in Florida and Texas. And they just could 7 not -- and he said, you know, until he took this class 8 he didn't -- he didn't really have a response. He just 9 knew that he believed in conservative things. And so he 10 said, "This is" -- "this is what I tell people now. 11 When people say 'how could you be a conservative,' I say 12 I was born that way. This is the way God made me, and 13 I can't help it." So, you know, I think it can be -- 14 again, it could be a positive or a negative thing. 15 I don't think it's useful -- again, denying 16 that there's a biology to sexual orientation I think is 17 a very bad idea. Whether at a particular moment in time 18 that's the -- that's creating prejudice. Right? You 19 can think -- you know, one of the solutions if -- if in 20 fact people are just born that way and they can't change 21 it, then there's an obvious solution. If gay is wrong, 22 then you just kill gay people. You could just do one of 23 those little tests like Down's syndrome. "Wait a 24 minute. My kid is going to be born gay. Let's, you 25 know" -- "you know, you should just get rid of those</p>	<p style="text-align: center;">Page 143</p> <p>1 think that's -- that part of it is a reality. The rest 2 of it not.</p> <p>3 <b>Q. Okay. Fair enough.</b></p> <p>4 A. Hence -- hence the fact that you got to -- when 5 you look at ideology across race and ethnicity there are 6 big party differences, but as Texas Republicans are 7 discovering while there are party differences across 8 Hispanics and non-Hispanics there are also some pretty 9 big ideological mismatches between those categories. 10 And you can -- that can be exploited, or you can -- you 11 know, you can ignore that. 12 W. wanted to -- well, W. very much wanted, 13 you know, to make Hispanics majority Republican. I 14 don't believe that that's shared by all the leaders of 15 the current Republican party. But there's certainly -- 16 there's a lever to do that, and the lever to do that is 17 that, you know, Hispanics are conservative, moderate, or 18 liberal at pretty much the same levels as everybody else 19 in Texas, and -- and so if you stop poking them in the 20 eye with a sharp stick they -- you know, they might 21 actually come around and vote for a more -- for sort of 22 a business conservative party so --</p> <p>23 <b>Q. My next question actually is that do you</b> 24 <b>believe that there is a correlation between genetically</b> 25 <b>determined ideology and race?</b></p>
<p style="text-align: center;">Page 142</p> <p>1 people." And obviously that's not the way the modern 2 world thinks, but you can see where that might occur to 3 people if they believed it was -- if they believed it 4 was biological. It might be easier from that 5 perspective to be able to convince people that you could 6 change your sexual orientation. 7 The same way that, you know, Protestants 8 and Jews in Europe, like, you know, "Tell me kiss the 9 ring. Whatever. What is it you need me to do here? 10 Like, I don't want to end up with my head on a pike." 11 So -- so I think there can be -- there can be a downside 12 to it. But at the same time I think denying -- denying 13 that there are -- when you say that everything about 14 race is nonbiological, including then the suggestion 15 that there are not physical traits that have been used 16 to build on top of that a racial fiction, then I think 17 you -- you really put yourself in a bad position because 18 empirically it's -- there are characteristics that are 19 heritable. And if we're going to -- if by person of 20 color you just mean someone with darker skin, that 21 characteristic you're referring to is a -- very much a 22 biological characteristic. It's something they can't 23 change by will. It's something that they're going to 24 pass on to their children. And so it's a -- it's a -- 25 you know, it is a -- it is a physical marker. And I</p>	<p style="text-align: center;">Page 144</p> <p>1 A. No.</p> <p>2 <b>Q. Do you believe that there's a correlation</b> 3 <b>between genetically determined ideology and ethnicity?</b></p> <p>4 A. No.</p> <p>5 <b>Q. Okay. So the dispersion of ideology among the</b> 6 <b>ethnicities and races is roughly equal regardless of --</b></p> <p>7 A. Yeah, I don't -- I don't believe that. I 8 don't -- I don't know that, so the -- the kind of scale 9 of study that it would take to establish that is -- it 10 would take a very large-scale study. It would have to 11 be -- it would have to be a global study because you 12 don't want to get people in particular settings. So I'm 13 not aware that anybody has actually done that on that 14 scale, but I've never seen anything to indicate that 15 there -- that those two things were associated, and nor 16 do I have any reason to believe they would be.</p> <p>17 <b>Q. Okay. Just one last question I think, and then</b> 18 <b>I'm going to confer with Barry and make sure I got all</b> 19 <b>the spaces. But I did want to ask you a little bit</b> 20 <b>about your book, if you don't mind. So you wrote a</b> 21 <b>book. What's the title of the book, sir?</b></p> <p>22 A. "Predisposed."</p> <p>23 <b>Q. You wrote it with some other authors, and</b> 24 <b>you've --</b></p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 145</p> <p>1       <b>Q. -- published with these authors before?</b></p> <p>2       A. Yes.</p> <p>3       <b>Q. Largely on the topic of conversation we just</b>      4 had for about the last 25 minutes, correct?</p> <p>5       A. Correct.</p> <p>6       <b>Q. Okay. Now, I haven't read the entirety. But</b>      7 what portion of the book did you write?</p> <p>8       A. Fairly little.</p> <p>9       <b>Q. Okay.</b></p> <p>10      A. So the actual writing, sort of the text is      11 mostly the work of -- I'd say probably two-thirds the      12 work of Kevin Smith and -- and first draft. The rest of      13 it would be Hibbing. So mine sort of -- the book is --      14 pulls together a bunch of things that we've done      15 research on, or that we've presented papers on, talked      16 about and so forth. So I was actively involved at      17 the -- at the research phase and served primarily as --      18 sort of in the early stages in outlining what the book      19 was going to look like, what we were going to put in      20 what sections. But the book itself was written almost      21 entirely by, the text of the book, by Hibbing and Kevin      22 Smith at Nebraska.</p> <p>23      <b>Q. But you endorse these findings largely?</b></p> <p>24      A. Yes.</p> <p>25      <b>Q. Is there any part of the book that you don't</b></p>	<p style="text-align: right;">Page 147</p> <p>1       <b>And I want to -- I don't want to put this in the record.</b>      2       <b>This is my book. I love it. But I want to make sure</b>      3       <b>I --</b></p> <p>4       A. Well, we got that on the record. I'm happy.      5       Do whatever you want.</p> <p>6       <b>Q. I want to talk about the finding here. So if I</b>      7       <b>could hand it to you.</b></p> <p>8       A. Yes.</p> <p>9       <b>Q. If you could read it, review it, and tell me</b>      10      <b>what's being said, specifically from the last paragraph</b>      11      <b>of 163 to the first paragraph of 165.</b></p> <p>12      A. All right.</p> <p>13      <b>Q. All right. Here you go.</b></p> <p>14      A. Yes.</p> <p>15      <b>Q. So what is that part of the book talking about?</b></p> <p>16      A. So there are -- this is not our research, but      17 there's a big body of research by Haidt and Graham and a      18 whole research team that focuses on kind of dimensions      19 of -- they call them dimensions of moral thinking that      20 underlie dimensions of kind of political belief or      21 political ideology. And John Jost, a political      22 psychologist, picks up on some of this as well. So, you      23 know, people have sort of placed different values on      24 different kinds of things. Right? So one of the things      25 some people feel very strongly about is that basically</p>
<p style="text-align: right;">Page 146</p> <p>1       <b>endorse?</b></p> <p>2       A. I don't -- I haven't read the book since the      3 book came out, so I -- I couldn't -- if you point me in      4 the direction of something, I'll tell you if I endorse      5 it or don't endorse it.</p> <p>6       <b>Q. I'm not cherry-picking. I'm just wondering. I</b>      7       <b>want to make sure that this is your opinion and are</b>      8       <b>parts of your opinion.</b></p> <p>9       A. Parts of it are certainly my opinion but I      10 didn't write most of it so there may well be stuff in      11 there that I don't agree with. That's -- you know,      12 there are values to team research, and there are --      13 there are disvalues. Right? Sometimes there are things      14 in there that -- you know, that weren't what you      15 personally believed but, you know, somebody feels      16 strongly about them.</p> <p>17      <b>Q. So I want to talk a little bit about the</b>      18      <b>portion called "Different Slates." And specifically I</b>      19      <b>want to talk about the racial portion of it or the --</b>      20      <b>that's the wrong way to say it. There's a portion of</b>      21      <b>this chapter that talks about racial policies,</b>      22      <b>specifically Affirmative Action. Do you -- are you</b>      23      <b>aware -- do you remember that part of the book?</b></p> <p>24      A. Yeah.</p> <p>25      <b>Q. And I'm not sure I understand the conclusion.</b></p>	<p style="text-align: right;">Page 148</p> <p>1       everybody should be treated the same, right, that we      2 should be colorblind or race blind, whatever. And      3 they -- and that's a -- for them that's a -- that's a      4 strong principle. For other people in their -- their      5 moral judgments are more connected to what Haidt's -- a      6 category Haidt calls care or harm, which is people are      7 motivated to respond on the basis of, you know, if -- if      8 someone has been harmed, they -- they deserve care. And      9 so that they look at it in terms of, you know, sort of      10 responding in a -- what you might think of as maybe a      11 more empathetic way.</p> <p>12      But, again, you can -- there's a morality      13 if you believe Haidt and Graham. There is a kind of      14 morality and also a kind of a political belief centered      15 around the issue about -- about care and harm. This is      16 what Lakoff, who I think is mistaken, calls this      17 maternal politics versus paternal politics. So the sort      18 of politics of order and respect and hierarchy, he      19 teaches those as sort of paternal politics. And      20 maternal politics is more about this kind of care and so      21 forth. So you can think about that in -- I think one of      22 the areas is -- maybe it's quite clear -- is sort of in      23 like sentencing guidelines. Right? So what should --      24 how should you sentence people? I mean, this -- one of      25 my colleagues asked, he says, "I never understood why if</p>

<p style="text-align: right;">Page 149</p> <p>1 you're going to pass a law to make something illegal why      2 don't you define what the punishment is for it?" Right?      3 "So if the punishment is the death penalty, it's the      4 death penalty." Right? "And if not's the death penalty      5 then I'd like to know what it is." He said, "Like if      6 you rob a bank what is the appropriate punishment? I      7 mean, if it's a year, make it a year. If it's 10 years,      8 make it 10 years." So his idea is you take an action,      9 the action has a consequence, and the consequence should      10 be the same for everybody. He doesn't like the idea      11 that some people get life in prison and some people get      12 parole. He thinks that's just wrong, everybody should      13 be treated the same.</p> <p>14 And, of course, we've experimented with      15 that in terms of judicial sentencing guidelines, and we      16 know the havoc that can produce. Right? Because it      17 just doesn't make any -- it doesn't make any sense to      18 not treat people as individuals. This is what students      19 of a bureaucracy called Bureaupathology, which is      20 everybody wants -- when somebody walks into a Social      21 Security office what do they want? They want to explain      22 to someone what their particular problem is, and then      23 they want the person to fix their particular problem on      24 their particular basis. Like, "I know that this is      25 supposed to take it here, or whatever, but I need it to</p>	<p style="text-align: right;">Page 151</p> <p>1 discovered things. They're found things. This is the      2 way some people view the world. Most people are      3 somewhere in between. But there are people who feel      4 very strongly that sort of equality under the law means      5 everybody is treated exactly the same way and there      6 could be no -- no interference in that.</p> <p>7 Other people feel very strongly that that's      8 a really -- it's, you know, an immoral approach and, in      9 fact, is born of a kind of indifference to people's      10 humanity, which it may be. But some people are much      11 less sensitive to the humanity of other people. Some      12 people have very high levels of empathy. Some people      13 have remarkably low levels. And that's not always      14 because of the conditions they grew up in. Those are      15 also -- there's actually a syndrome called Williams      16 syndrome in which people simply don't have the      17 capability of separating their utilities from other      18 people's. They'll -- they act only on other people's      19 utility, no concern for themselves at all. That's -- I      20 mean, in some ways that's amazing. Right? What a great      21 kind of a person. But it's hardly neurotypical. People      22 who are completely and unalterably selfish, which we      23 often call sociopaths, are also not neuro -- thankfully      24 not neurotypicals. But they -- but that is -- that is      25 what they believe.</p>
<p style="text-align: right;">Page 150</p> <p>1 be fixed now because" -- "you know, fix it." And what a      2 bureaucrat does, of course, is they just follow standard      3 operating procedures. So to some people that's the      4 morality of large-scale organized standard operating      5 procedures bureaucracies, is if you're the king of      6 England or, you know, if you're a homeless person you're      7 treated exactly, in the case of most people's belief,      8 exactly as badly by the Social Security Administration      9 regardless. Right?</p> <p>10 And the other side of that is, of course,      11 is people in different situations being treated equally,      12 for example, being punished equally, or being served as      13 poorly or slowly, is completely inappropriate because it      14 doesn't at all match the circumstance they find      15 themselves in. It's not equal when you treat everybody      16 equally when they're not in the same situation, when      17 they haven't done the same thing, or when they're not      18 capable of achieving the same thing or so forth. Right?      19 So the question is do you want to -- you know, do -- are      20 you inclined toward viewing treating difference      21 differently as a moral hallmark or on treating everyone      22 equally as a moral hallmark. And then the question is      23 is one of those hallmarks in and of itself inappropriate      24 or -- they are the way -- these are just -- these aren't      25 things that we create out of philosophy. These are</p>	<p style="text-align: right;">Page 152</p> <p>1           <b>Q. But these moral hallmarks -- I didn't mean to</b>      2           <b>cut you off. I apologize. I think the point is is that</b>      3           <b>they're -- it's biologically measurable, correct?</b></p> <p>4 A. Right. So there is an -- there is an      5 underpinning to that has to do with different      6 brains. Right? So, again, people who are -- who tend      7 to be selfish can learn to be less selfish, can -- but      8 it's really about -- it's sort of on second thought.      9 Right? You can learn -- because we have metacognition      10 we can learn that our first impulse is perhaps not very      11 generous or that our first impulse may be too generous.      12 Right? And then we can learn to discipline that on our      13 own. But the impulse is the impulse, and some part of      14 that impulse comes from life experience, but some part      15 of that impulse also differs biologically across      16 individuals.</p> <p>17           <b>Q. And I think that in that paragraph one of the</b>      18           <b>impulses is a racial impulse, correct? By which I mean</b>      19           <b>racist.</b></p> <p>20 A. So, I mean, you certainly could have a racist      21 impulse.</p> <p>22           <b>Q. That's biologically determined, correct?</b></p> <p>23 A. I think there are -- there are features of      24 biology that incline people to be -- again, I think you      25 have to be careful about exactly what you mean by</p>

<p style="text-align: right;">Page 153</p> <p>1 racist. But to be ethnocentric; that is, to be      2 suspicious of people who are not like them on a whole      3 lot of -- in a whole lot of ways, people that aren't      4 like them on the basis of race, on the basis of      5 nationality, the basis of language, on the basis of      6 religion, on the basis of appearance, even on the basis      7 of gender, right, sort of the -- you know, the sort of      8 traditional patriarchal religion is very suspicious of      9 having women anywhere around them, so those -- those      10 impulses can vary across individuals biologically or the      11 kind of things that socially build into those and create      12 things like fascism can come out of those, can be      13 encouraged by those. It doesn't mean that everybody who      14 ends up falling into the thrall of that in a national      15 situation, for example, is therefore sort of -- again,      16 the environment has a big influence. And so the      17 question of sort of how could Germany get this way or      18 how could Japan get this way that was asked around World      19 War II is really inappropriate in the sense that in --      20 in one sense the Japanese could be that way because they      21 were Asian, and for the Germans it's, well, I guess      22 because they were Germany, I mean, because they weren't      23 France. I don't know what. But, again, that was -- you      24 know, that's -- that's inappropriate.      25 But it is the case that some individuals,</p>	<p style="text-align: right;">Page 155</p> <p>1 blindness is not unnatural. I mean, I think he is --      2 you know, some people are on -- you see this on the      3 autism spectrum. People on the autism spectrum are also      4 incredibly literal so you have to be really careful      5 because they -- a sign says something, they follow it,      6 and everybody else says, "no, no, no, that's not" --      7 it's like "no." Right? So that literalism, you see      8 some of that in constitutional interpretation, right,      9 that inability -- you know, when Scalia says, "Why      10 wouldn't it mean exactly what it says," and my question      11 is, "Why do you think it means" -- "what makes you think      12 that when people put something on a piece of paper it's      13 literally exactly what they meant?" Right? Literalism      14 is a -- is, again, a -- you can -- you can sort of --      15 you can see where a brain that's to this side on the      16 autism spectrum would be a natural host for a belief      17 that all other things being equal probably people meant      18 exactly what they wrote down. Whereas on this other      19 side you'd say, "Well, people write all kinds of stuff."      20 Right? "It probably doesn't tell us anything." So you      21 can be -- you can believe that everyone should be      22 treated equally. You can believe it's inappropriate to,      23 as the current -- I think the current majority of the      24 Supreme Court believes -- that -- that because race is a      25 suspect category that anything that incorporates race</p>
<p style="text-align: right;">Page 154</p> <p>1 you know, take to -- take to those kinds of things very      2 quickly, very easily, right, without much effort can      3 fall into almost habitually think in ways that are      4 clearly racist. And for other individuals it's less so.      5 And the point here is not that. The point is that      6 people that have a strong belief in the importance of      7 equality -- I was involved in a case where the expert,      8 the expert for the other side said Clarence Thomas was      9 clearly a racist. I have trouble with that. He -- I      10 mean, I happen to think he's a remarkably poor jurist,      11 but that's really a separate issue. Right? I differ      12 with him on all kinds of notions of not only judicial      13 philosophy, but, I mean, you know, his habitual      14 inactivity for a long time on the court, and he's now      15 rediscovered his voice and -- my God. I hope to God      16 he's back out of the hospital and fine because this will      17 be just the kind of thing, have me like --      18       <b>Q. I won't do that to you. I promise you.</b>      19       A. -- ragging on Clarence Thomas and then he's      20 dead. Like we find out, we come out here, he died      21 recently.      22       <b>Q. I promise I won't do that to you.</b>      23       A. Yeah. So, you know, I'll say this. Again,      24 I -- I assume that Clarence Thomas is remarkable -- I      25 mean, judicial conservatism almost to the point of</p>	<p style="text-align: right;">Page 156</p> <p>1 into decision-making, whether it's drawing district      2 lines or anything else, is suspect. Why is it suspect?      3 It's suspect because all other things being equal you      4 ought not to be using race in making decisions.      5       Now, the court recognizes that while that      6 sets a high -- a high threshold for what a state can do,      7 for example, they recognize that there are conditions      8 under which you do something about that. Right? So      9 that's -- we wouldn't have Section 2 without it. We      10 wouldn't draw districts without that. On the other      11 hand, they also recognize that absent meeting that high      12 threshold that it is a suspect category, that in just      13 sort of regular legislation if you put race in there      14 that's inappropriate, and it ought not be in there      15 because everybody ought to be treated the same      16 regardless of race. So that -- the point of this      17 paragraph is just that you should not assume that people      18 who believe that everyone should be treated equally      19 believe that because they're fundamentally racist.      20 Among other things, it dilutes the importance of      21 understanding that people are fundamentally racist.      22 Right?      23       I think that's really one of my problems      24 with calling every difference in voting behavior,      25 however slight, and even if it occurs without regard to</p>

<p style="text-align: right;">Page 157</p> <p>1       the race of candidates, racially polarized voting, is      2       exactly Brennan's concern, which is if that -- if you're      3       going to label that, people are going to say "wait a      4       minute. So you're saying the voters of Spring Branch      5       are racist?" And the answer is "yes, some of the voters      6       in Spring Branch are racist." Right? We're in Houston,      7       Texas. There are racists here. But that's not -- it's      8       not to say that the entire electorate is or even that      9       the behavior of the electorate in those elections is the     10      result of racism as opposed to something else, right,     11      some policy concern or whatever. So I think if you     12      don't preserve the possibility that individuals can     13      believe in treating everyone the same without that being     14      a code for racism then you diminish the real importance     15      of what it means for someone to actually be racist     16      because racists don't want everybody to be treated the     17      same regardless of race.</p> <p>18      <b>Q. Fair.</b></p> <p>19      A. They very much want people of a certain race to     20      be treated differently. Right? So that's, I think, is     21      a -- it's not only important to distinguish that in --     22      just in a general sense of thinking. Although, you     23      know, nothing that we posit here is proven in any     24      scientific sense. We never really quite get there in     25      science. But I think there's good scientific reason to</p>	<p style="text-align: right;">Page 159</p> <p>1       A. I don't believe in biological determinism, so      2       I'm not going to say that. I really don't. I don't      3       believe in environmental determinism, and I don't      4       believe in biological determinism. It's just not a      5       way -- as is true with voting. There are a host of      6       factors that affect people's votes. Those factors may      7       be very small factors for some people. They may be      8       subconscious factors for some people. They may be      9       factors that they override in metacognition. They may     10      be factors that they don't override. They may be     11      factors that are in fact their view of the world and     12      their -- and the way they see things. Right? So they     13      may be frank and open racist attitudes.</p> <p>14      And I think you -- to understand -- to     15      characterize the impact of that on a particular election     16      system you have to have a sense of the degree to which     17      that's actually playing out in the election system. And     18      I don't think the -- sort of the current court system     19      for doing that is perfect, but I think it's been pretty     20      serviceable and done a pretty decent job. And I don't     21      think it tries to -- my view of this -- and I know it's     22      not universally agreed to -- but my view of this is that     23      what's important is if the -- if the -- if the nature of     24      the way that force is operating in the election system     25      creates certain things that can happen and certain</p>
<p style="text-align: right;">Page 158</p> <p>1       believe that those are different states of thinking,      2       that they are -- I would -- I would be willing to wager      3       that in, given six months, 60 subjects in an fMRI      4       machine, I could -- I could show you a brain signature      5       that distinguishes everyone should be treated equally      6       from racism.</p> <p>7      <b>Q. Which presupposes that you could use the fMRI     8      machine to determine if someone is a racist, correct?</b></p> <p>9      A. It means -- not certainly. But at some -- at     10     some predictive value above random that you could     11     separate -- you could have a -- you could take a set of     12     people in which everybody said "this is what I think the     13     law should be, no regard to race," and you could find     14     the signal that separates -- I mean, I don't even --     15     honestly I wouldn't take your money this is so easy.     16     But yes. The brain's signature for actual racism is     17     really not hard.</p> <p>18      <b>Q. How common is it?</b></p> <p>19      A. That we don't know. We don't know how common     20     that is.</p> <p>21      <b>Q. Does it affect voting behavior?</b></p> <p>22      A. I would -- it's hard to imagine that racism     23     wouldn't affect voting behavior.</p> <p>24      <b>Q. So some part of voting is affected by racial     25     politics and racial biological determinism, correct?</b></p>	<p style="text-align: right;">Page 160</p> <p>1       things that can't, and those things disproportionately      2       affect both the choice of minority voters and the      3       opportunity of minority candidates, then that's the      4       level at which you need to think about getting another      5       election system, for example.</p> <p>6      <b>Q. And do you have an opinion about whether that     7      has been met here today or for SBISD? Have you ever     8      advised them on that?</b></p> <p>9      A. Well, I don't think I'm supposed to tell you     10     what I told the lawyers in terms of my advice.</p> <p>11      <b>Q. It depends on when. Right?</b></p> <p>12      A. What?</p> <p>13      <b>Q. It depends on when. Let's say before 2017 did     14     you ever advise them that they had to consider adopting     15     single-member districts?</b></p> <p>16      A. My recollection is that as early as the     17     dismissal of the case in what I think was maybe the '90s     18     on Gingles 1 my advice to the district was that as     19     change took place over time they should think seriously     20     about changing -- in whatever form they wanted to they     21     should change their election system. And I was     22     certainly, you know, happy to talk to them later about     23     alternatives in terms of things like cumulative voting.     24     So that's -- you know, my view has been that that's --     25     that was prudent for the district to do. It's not that</p>

<p style="text-align: right;">Page 161</p> <p>1 I knew for certain. No one ever knows what's going to      2 happen in a lawsuit. But I think, you know, you can      3 give advice as I do quite commonly to -- to districts      4 about what's prudent. And I think that was my advice      5 then. That's -- you know, I don't -- I personally don't      6 think lawsuits are something that's good for school      7 boards. So I know they have their own -- again, they      8 have their own preferences. I'm not an opponent in any      9 sense of at-large elections. I think there's a very      10 good reason why at-large elections are not on their face      11 illegal. I think there's a very good reason why groups      12 like the Urban League still -- you know, it's still a      13 very common form of election for small cities and      14 municipalities, and it has -- it has benefits to it.</p> <p>15 On the other hand, I don't worship at the      16 alter of -- I was at a school board meeting once and a      17 fell in full uniform, about 80 years old, stood up and      18 said, "I didn't fight in World War II and Korea for      19 single-member districts." And so I didn't say anything      20 because it's really rude to say things like that to old      21 people. Besides, he had a -- just enough of a      22 resemblance to my dad that I was afraid he might smack      23 me if I said anything. But my answer to him would have      24 been, "Yes, you did." Right? "The entire United States      25 Government, every election to every office in the United</p>	<p style="text-align: right;">Page 163</p> <p>1 <b>that, right, so --</b>      2 A. Yeah. And God knows -- I'll tell you what. I      3 used to always scoff, you know, when people say "oh,      4 you" -- "you don't want a Constitutional Convention      5 because God knows what they would do."</p> <p>6 <b>Q. God knows.</b>      7 A. But that's before -- that was before like the      8 last 10 years. And now I'm coming around to the view of      9 I don't think I want a Constitutional Convention because      10 God knows what they would do.</p> <p>11 MR. GOLANDO: I'm going to take a small      12 break here, sir.</p> <p>13 THE WITNESS: All right.</p> <p>14 MR. GOLANDO: I really enjoyed the      15 conversation. I appreciate your time, but let me just      16 make sure that I have done my job correctly.</p> <p>17 MR. CRAWFORD: Sure.      18 (Recess from 1:59 p.m. to 2:07 p.m.)</p> <p>19 <b>Q. (BY MR. GOLANDO) Okay. We have just a few</b>      20 <b>questions. I want to authenticate some documents and</b>      21 <b>add some documents into the record. And then I have</b>      22 <b>some questions based on this, if you don't mind.</b></p> <p>23 A. All right.</p> <p>24 <b>Q. So my first thing is I want to -- I'm going to</b>      25 <b>hand you Exhibit 6, Expert Exhibit No. 6. I believe</b></p>
<p style="text-align: right;">Page 162</p> <p>1 States Government is based on some form of single-member      2 district whether it's the House or the Senate, the House      3 which declared the war you fought in first and didn't      4 the second. And we're so obsessed with it that even the      5 president even though it's impossible to elect a single      6 individual in a series of single-member districts we      7 insist on doing it anyway and electing the president in      8 each of our 50 states. That's how" -- "that's how      9 obsessed we are as a country. The country you fought      10 for is a country obsessed with single-member geography      11 in a way the Europeans find just absolutely implausible      12 and unaccountable."</p> <p>13 So there's -- there's nothing magic about      14 at-large elections, but -- and, again, I -- you know, I      15 would much prefer the U.S. adopt a parliamentary system.      16 I think we're at the breaking point for geographic      17 representation. We're not going to solve the partisan      18 gerrymandering problem short of just getting rid of the      19 obvious problem, which is geography. Right? We      20 don't -- we are not a geography to be represented      21 anymore. That just doesn't make any sense. We once      22 were, but we are now people to be represented. That's      23 what proportional representation is for. It solves      24 pretty much all the problems you can think of but --</p> <p>25 <b>Q. We need a Constitutional Conventional to do</b></p>	<p style="text-align: right;">Page 164</p> <p>1 <b>this is a copy of your consulting agreement with SBISD.</b>      2 <b>Would you authenticate that for me, please?</b>      3 A. Yes, that's correct.</p> <p>4 <b>Q. And that's your signature on the back page?</b>      5 A. It is.</p> <p>6 <b>Q. And that's a true and correct copy of that,</b>      7 <b>correct?</b>      8 A. Yes.</p> <p>9 <b>Q. And do you have your contract that you had</b>      10 <b>before twenty -- before the litigation began, the one</b>      11 <b>where you -- that governs the OLS and the EI that you</b>      12 <b>provided to Ms. McBride?</b>      13 A. I -- I might or I might not. I'm not sure      14 because I was doing a whole bunch of things with the      15 same law firm, so I don't know if we were just, you      16 know, working on different things or if there's a      17 separate, something that -- either an umbrella or an      18 actual contract, but I'm happy to look and see.</p> <p>19 <b>Q. If you wouldn't mind taking a look.</b>      20 A. Yeah.</p> <p>21 <b>Q. I'd like to see it. And if you want to make</b>      22 <b>the record more fulsome you have time to edit the</b>      23 <b>deposition or to provide any discovery. Discovery does</b>      24 <b>close on March 30th, but --</b>      25 A. All right.</p>

<p style="text-align: right;">Page 165</p> <p>1        <b>Q. -- whenever you get to it I'd be appreciative.</b>      2              <b>The next one is the article you provided</b>      3              <b>that formed the basis of part of your report. It's --</b>      4              <b>I've labeled it Expert Exhibit No. 7. The title of it</b>      5              <b>is "Republican Party of Texas Doubles Down on Local</b>      6              <b>Elections." Is this a true and correct copy of that</b>      7              <b>article, sir, that you relied on?</b></p> <p>8              A. Yes, it is.</p> <p>9        <b>Q. And I noted in your report that -- I don't</b>      10     <b>think you made a reference to partisanship at all. And</b>      11     <b>I also asked you if you had measured partisanship. I</b>      12     <b>just wonder what role did this play in your report, sir.</b></p> <p>13        A. In the -- it sort of comes in in two places,      14        but primarily with regard to the discussion of the --      15        the literature on the potential negative effects of      16        switching to at-large elections. There's the discussion      17        about how this can end up becoming -- itself becoming a      18        political issue, and so that -- it's part of that notion      19        that board elections are becoming increasingly      20        politicized, not just partisan but politicized, and that      21        this is sort of one of the things that may -- that may      22        feed into that. So there's -- there's just a      23        different -- or there's a different system for both      24        identifying potential candidates and for advancing      25        political campaigns for school boards and for</p>	<p style="text-align: right;">Page 167</p> <p>1              MR. ABRAMS: No. I think that there was --      2              MS. SHAKRA: Let me see.      3              MR. ABRAMS: I just remember there being      4              like a one sentence page.</p> <p>5              THE WITNESS: Yeah. I think this is the --      6              MS. SHAKRA: The one missing?</p> <p>7              THE WITNESS: Is there a page that looks      8              like that?</p> <p>9              MR. CRAWFORD: I don't know that we made      10     a -- that made the copy.</p> <p>11        MR. GOLANDO: Maybe it's in the back of the      12     contract.</p> <p>13        MS. SHAKRA: Did it get out of order?</p> <p>14        THE REPORTER: Do y'all want to go off the      15     record, by the way?</p> <p>16        MR. CRAWFORD: Sure.      17        (Discussion off the record from      18        2:11 p.m. to 2:12 p.m.)</p> <p>19        <b>Q. (BY MR. GOLANDO) I've handed you expert</b>      20     <b>Exhibit No. 8. Could you authenticate it? Is that the</b>      21     <b>article you relied on in part for your report?</b></p> <p>22        A. Yes.</p> <p>23        <b>Q. Okay. What was important about this article</b>      24     <b>for your report from your perspective?</b></p> <p>25        A. It's not particularly important because it's</p>
<p style="text-align: right;">Page 166</p> <p>1        nonpartisan cities than there was 20 years ago.</p> <p>2        <b>Q. Reasonable. But your report doesn't cite to</b>      3     <b>this article, correct?</b></p> <p>4        A. It's something that I looked at, and so I      5        brought it because I didn't remember if I had cited it      6        directly --</p> <p>7        <b>Q. Okay.</b></p> <p>8        A. -- or if I was just -- but it is something that      9        I looked at that, and that affected my thinking in      10      writing the report.</p> <p>11        <b>Q. Thank you, sir. I appreciate it. The last one</b>      12     <b>is Expert Exhibit No. 8. It looks like what's called an</b>      13     <b>SSN memo. I'm not sure of the source of that. It's</b>      14     <b>titled "Do District-Based Elections for School Board</b>      15     <b>Help Minority Candidates Get Elected?" I'm going to</b>      16     <b>hand it to you. Could you authenticate it for me, sir?</b></p> <p>17        A. Yes.</p> <p>18        <b>Q. Is that a true and correct copy of the article?</b></p> <p>19        A. Is there a -- is there a page missing?</p> <p>20        <b>Q. That's what we have I think.</b></p> <p>21        MR. ABRAMS: I think there was a third page      22        with a -- just one line on it.</p> <p>23        MR. CRAWFORD: I believe those were your      24        originals. So let's see if we --</p> <p>25        MS. SHAKRA: This page or --</p>	<p style="text-align: right;">Page 168</p> <p>1        not really research, per se. But I thought it was      2        useful because it's a -- you know, this is part of a      3        kind of a public policy synopsis kind of thing that sort      4        of -- it's supposed to be helpful to policymakers. And      5        the researcher points out two things. One is he points      6        out this idea that, you know, that may not always be --      7        there might not always be a positive effect for Latino      8        representation in the switch from at-large to      9        single-member. And he also points out that his research      10      shows that school board elections are partisan even if      11      they're not explicitly partisan in the form of the      12      ballot. And so I thought that not only does it sort of      13      show those two things, but it -- it shows that it's      14      being discussed by people not just in a research sense      15      but in a kind of -- sort of the form of kind of public      16      policy recommendation.</p> <p>17        <b>Q. And what is the source of this article?</b></p> <p>18        A. I found it on the Internet, and it's a -- as      19      best I remember, it's a site that has a whole series of      20      things where people reflect on -- sort of produce brief      21      summaries of kind of research findings that may be of      22      use related to -- related to public policy.</p> <p>23        <b>Q. And --</b></p> <p>24        A. I think it's San -- San Diego I think is where      25      this -- where the person is.</p>



Page 173

1 Mr. Barry Abrams - 00:00  
2 Mr. Martin Golando - 03:39  
3 Mr. Charles J. Crawford - 00:00  
4 That pursuant to information given to the  
5 deposition officer at the time said testimony was taken,  
6 the following includes counsel for all parties of  
7 record:  
8 Mr. Barry Abrams, Mr. Martin Golando, Attorneys for  
9 Plaintiff;  
10 Mr. Charles Crawford, Mr. Lucas Henry, Attorneys  
11 for Defendants.  
12 That \$\_\_\_\_\_ is the deposition officer's  
13 charges to the Plaintiff for preparing the original  
14 deposition transcript and any copies of exhibits;  
15 I certify that a review of the transcript was  
16 requested.  
17 I further certify that I am neither counsel for,  
18 related to, nor employed by any of the parties or  
19 attorneys in the action in which this proceeding was  
20 taken, and further that I am not financially or  
21 otherwise interested in the outcome of the action.  
22  
23  
24  
25

Page 174

1 Certified to by me this 5th day of April, 2022.  
2  
3  
4

5   
JOHN G. ROCHELLE, Texas CS 2/25/2014  
Expiration Date: 10/31/23  
6 Worldwide Court Reporters, Inc.  
Firm Registration No. 223  
7 3000 Weslayan, Suite 235  
Houston, Texas 77027  
8 (713) 572-2000  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

44 (Pages 173 to 174)

Worldwide Court Reporters, Inc.  
(800) 745-1101